



**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE  
REGISTRATION RENEWAL APPLICATION OF NYC MATERIALS CORP. TO  
OPERATE AS A TRADE WASTE BUSINESS**

**I. PRELIMINARY STATEMENT**

NYC Materials Corp. (“NYC Materials” or “Applicant”) has applied to the New York City Business Integrity Commission (“Commission”), formerly known as the New York City Trade Waste Commission, for a renewal registration to operate as a trade waste business. See Title 16-A of the New York City Administrative Code (“Admin. Code”) § 16-505(a).

On October 15, 2014, the Commission staff issued and served the Applicant with a 17-page Notice to NYC Materials of the Grounds to Deny the Registration Application of NYC Materials Corp. to Operate as a Trade Waste Business (“Recommendation”). The Applicant was granted over ten business days to respond, until October 31, 2014. See Title 17, Rules of the City of New York §2-08(a). On October 24, 2014, the Commission received the Applicant’s response (“Response”), consisting of a one-page letter by the Applicant’s attorney, Randy Scott Zelin, Esq., who acknowledged receipt of the Recommendation and stated that “No further action will be taken by NYC Materials Corp.” See October 24, 2014 letter from Randy Scott Zelin, Esq. to Commission Staff. The Commission has carefully considered both the Commission staff’s Recommendation and the Applicant’s Response.

Based on the record as to the Applicant, the Commission now denies the registration renewal application of NYC Materials because NYC Materials lacks good character, honesty and integrity for the following independently sufficient reasons:

- A. NYC Materials Failed to Disclose Anthony Vulpis Jr. as a Principal.**
- B. The Undisclosed Principal, Anthony Vulpis Jr., has been Convicted of a Racketeering Activity.**
- C. NYC Materials Failed to Disclose Michael Bonsera Jr. as a Principal.**
- D. The Undisclosed Principal, Michael Bonsera Jr., was Previously the Principal of a Company that was Denied a Trade Waste Registration by the Commission.**
- E. NYC Materials failed to provide information and documentation required by the Commission.**

## II. BACKGROUND AND STATUTORY FRAMEWORK

Every commercial business establishment in New York City must contract with a private carting company to remove and dispose of the waste it generates. Historically, the private carting industry in the City was operated as a cartel controlled by organized crime. As evidenced by numerous criminal prosecutions, the industry was plagued by pervasive racketeering, anticompetitive practices and other corruption. See e.g., United States v. International Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993); People v. Ass'n of Trade Waste Removers of Greater New York Inc. et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); United States v. Mario Gigante et al., No. 96 Cr. 466 (S.D.N.Y.); People v. GNYTW, 701 N.Y.S.2d 12 (1<sup>st</sup> Dep't 1999).

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

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 therefore from the [C]ommission.” Admin. Code §16-505(a). Before issuing such license, the Commission must evaluate the “good character, honesty and integrity of the applicant.” Id. at §16-508(b). The New York City Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making a licensing decision:

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 therefore, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Id. at § 509(a)(i)-(x). Additionally, the Commission may refuse to issue a license or registration to any applicant who has "knowingly failed to provide information or documentation required by the Commission...or who has otherwise failed to demonstrate eligibility for a license." Id. at § 509(b). The Commission may refuse to issue a license or registration to an applicant when such applicant was previously issued a license which was revoked or not renewed, or where the applicant "has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license." Id. at § 509(c). Finally, the Commission may refuse to issue a license or registration to any applicant where the applicant or its principals have previously had their license or registration revoked. Id. at § 509(d).

An applicant for a trade waste license or registration has no entitlement to and no property interest in a license or registration and the Commission is vested with broad discretion to grant or deny a license or registration application. Sanitation & Recycling Industry, Inc., 107 F.3d 985, 995 (2d Cir. 1997); see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997). Admin. Code § 16-116.

### III. STATEMENT OF FACTS

Upon information and belief, NYC Materials is a trucking company that transports construction and demolition debris (C&D), as well as sand and gravel to various concrete plants. On or about April 24, 2013, NYC Materials applied to the Commission to renew its registration to operate as a trade waste business. See NYC Materials Corp.'s Renewal Application for a Trade Waste Removal Registration ("Application"). The Application disclosed Anthony Gagliardi ("Gagliardi") as its sole principal and owner. See id. at 7. On August 22, 2013, the Commission Staff interviewed Gagliardi under oath regarding NYC Materials' operations and employees. See Transcript of Sworn Interview of Gagliardi ("*Gagliardi Tr.*").

As set forth more fully below, although Gagliardi claims to be the sole principal of NYC Materials, the Commission's investigation has indicated that Anthony Vulpis, Jr. ("Vulpis") and Michael Bonsera, Jr. ("Bonsera"), both of whom are disclosed as mere vehicle operators, are in fact Principals, as defined by Admin. Code § 16-501(d).

#### A. Anthony Vulpis Jr., a Convicted Racketeer, is an Undisclosed Principal

Vulpis is the son of Anthony Vulpis, Sr., an organized crime associate who was convicted in 1990 for his involvement in one of the "largest and most serious frauds

involving environmental crime ever prosecuted in the United States.” See United States v. Paccione, 751 F. Supp. 368, 371 (S.D.N.Y. 1990).<sup>1</sup> Vulpis had his own involvement with law enforcement when, in 2001 he was indicted for Criminal Sale of a Controlled Substance (cocaine), a Class A felony. See Complaint, People v. Anthony J. Vulpis, September 13, 2001. While that indictment was pending, Vulpis was subsequently charged in 2002 for Attempted Criminal Mischief by intentionally damaging a driver side mirror of a vehicle, a Class E felony. See Complaint, People v. Anthony J. Vulpis, December 12, 2002. In 2003, Vulpis pleaded guilty to Criminal Sale of a Controlled Substance in the 3<sup>rd</sup> Degree, a Class B felony, and Attempted Criminal Mischief in the 4<sup>th</sup> degree, a Class A misdemeanor. See Certificate of Disposition Indictment, Case 00752N-2002; Certificate of Disposition Indictment, Case SCI-00505N-2003. Vulpis was subsequently sentenced to one (1) to three (3) years imprisonment. See Id.

Both before and after his racketeering conviction, Vulpis was employed by various carting companies, most of which had significant integrity issues. From the late 1990s through the early 2000s, Vulpis was employed, purportedly as a driver, by A.V.F. Carting Company, Inc. (“AVF”). See Disclosure Form for a Principal of a Trade Waste Business, DTA Industries, Inc., pg. 4. AVF was denied a trade waste license by the Trade Waste Commission in 2002. See Denial Decision of AVF. As stated in the denial, AVF’s principal, Anthony Ferrantello (“Ferrantello”), had a history of criminal charges, financed AVF through suspicious gambling proceeds, and was suspected of using AVF as a business front for organized crime. See Denial Decision of AVF, pgs. 10-13. Due to these issues, the Trade Waste Commission determined that AVF’s licensure could only be conditioned on its acceptance of a monitorship by an independent auditor. See Denial Decision of AVF, pg. 14. When AVF refused this condition, it was found to lack good

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<sup>1</sup> Anthony Vulpis, Sr. has been an associate of multiple organized crime families, who, together with his co-conspirators, operated an illegal landfill in Staten Island in the late 1980’s. This scheme was one of the catalysts of Local Law 42 and the regulation of the C&D industry by this Commission. Vulpis Sr. is not the only family member with ties to organized crime or corruption. Vulpis’ uncles, Daniel Vulpis, Sr. and Daniel Vulpis, Jr., were indicted in the Southern District of New York for defrauding the New York City Department of Sanitation of dumping fees by bribing the City’s inspectors and by falsely representing that the materials dumped qualified for the “free cover” program when in fact they did not. Daniel Sr. and Jr. were convicted in 1995 to felony wire fraud charges, incarceration and fines. Later, in 1998, their company, D.V. Carting, Co. was denied a trade waste license by the Trade Waste Commission in 1998. See D.V. Carting Denial Decision. In 1997, another uncle, Dominick Vulpis (“Dominick”), pleaded guilty to a felony count of enterprise corruption for his role as a member of the illegal cartel that controlled the private garbage collection industry in New York City. 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.); “5 Admit Roles with Mafia In a Trash Hauling Cartel” Selwyn Raab, *The New York Times*, February 18, 1997. Dominick also owned, Canarsie Recycling (“Canarsie”), which filed false reports listing another Vulpis cousin, Anthony Senter (“Senter”), a Soldier in the Lucchese Crime Family, as a Canarsie employee to help him qualify for a pension with the International Brotherhood of the Teamsters Local 813. During this time period, Senter was actually serving a life sentence for murder. See “Teamster Local Aids Hit Man’s Quest for Pension” Selwyn Raab, *The New York Times*, June 4, 1994.

character, honesty and integrity, and therefore denied a trade waste license. See Denial Decision of AVF.<sup>2</sup>

Vulpis left AVF to serve his prison sentence in or about 2003. *Gagliardi Tr.* at 28. Following his release in 2004, Vulpis worked for approximately two (2) years at Atlas Sanitation Corp. (“Atlas”). See Disclosure Form for a Principal of a Trade Waste Business, DTA Industries, Inc., pg. 4. Up until 2002, Atlas was owned by Michael Marchini, Sr. (“Marchini”). Marchini, who had been indicted on an organized crime related scheme,<sup>3</sup> was reported to have tried to set-up a carting company that could be used as “front” by the Genovese crime family. See Denial Decision of AVF, pg. 12. In 2002, Marchini signed a lifetime debarment from the trade waste industry. See Affidavit of Michael Marchini, Sr., November 29, 2002.

In or about 2006, Vulpis left Atlas and began working at New York Dirt Contracting Corp. (“NY Dirt”). On June 11, 2009, NY Dirt was served with the Commission Staff’s Recommendation to Deny the Renewal Application of NY Dirt (“NY Dirt Recommendation”), and on July 31, 2009, the Commission voted to deny the Registration Application of NY Dirt. See Denial Decision of NY Dirt. The president of NY Dirt was Vulpis’ father-in-law, Edward Raffetto (“Raffetto”). *Gagliardi Tr.* at 41-42. Raffetto was found by the Commission to have knowingly associated with Gregory DePalma (“DePalma”), a now deceased former Captain in the Gambino crime family and a convicted racketeer. See Denial Decision of NY Dirt.

Notably, in the same month following the service of the NY Dirt Recommendation, DTA Industries, Inc. (“DTA”) applied to the Commission for a license, listing Vulpis as its sole principal. DTA’s application listed no employees and stated that “vehicles [were] to be acquired upon approval.” See Application for a Trade Waste Removal License of DTA. DTA’s application did provide a supplemental statement, drafted by its attorney:

Mr. Vulpis is an individual whose father and other family members have noteworthy criminal records. Mr. Vulpis also has a criminal conviction, although unrelated to the solid waste industry or government regulation. It is expected that the Commission staff will sit with Mr. Vulpis for an in-depth discussion of the foregoing. Mr. Vulpis stands ready to provide a forthright account of any and

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<sup>2</sup> The nominal principal of the Applicant, Gagliardi, also worked for Ferrantello at AVF for approximately two years, apparently because Vulpis “got him a job there.” *Gagliardi Tr.* at 28.

<sup>3</sup> Michael Marchini was indicted in 1985 along with Matthew “Matty the Horse” Ianiello, a Genovese Capo, for racketeering, extortion and mail fraud. The indictment charged that Ianiello, Marchini and others used Atlas and another carting company as fronts to obtain Con Edison contracts that Ianiello could not bid on due to his organized crime ties. The defendants were acquitted in 1986. See Denial Decision of AVF, pg. 12.

every aspect of his life, including as it relates to his family and his criminal conviction.

Id. at “Supplemental Statement.” Apparently, Mr. Vulpis was not quite so willing to “stand ready” to provide a “forthright account,” since as soon as Vulpis was noticed by the Commission for a deposition, Vulpis withdrew his application for a trade waste removal license. See May 19, 2010 letter from Commission Staff to Peter Sullivan, Esq. (“Sullivan”); May 24, 2010 letter from Commission Staff to Sullivan; July 15, 2010 letter from Sullivan to Commission Licensing Division.

With Vulpis having apparently reconsidered his strategy of disclosing himself as a principal, on October 1, 2010, (less than three months after Vulpis withdrew his application) NYC Materials was incorporated. See NYS Dept. of State, Division of Corporations, Entity Information for NYC Materials. NYC Materials submitted its initial application for a registration on or about March 15, 2011. See NYC Materials’ Application for a Trade Waste Removal Registration (“Initial Application”). In the Initial Application, Vulpis’ father-in-law, Gagliardi, was disclosed as the sole principal, and no other employees and no trucks were listed. See Initial Application. Having not disclosed Vulpis as a principal or employee, NYC Material’s application was granted by the Commission, effective June 1, 2011. See Registration Order of NYC Materials Corp. At some point following NYC Materials’s approval, NYC Materials hired a number of purported vehicle operators, including Vulpis. What their application purposefully omits was that Vulpis was involved from the beginning and instrumental in starting NYC Materials. In fact, the money used to start the business was Vulpis’s. As stated by Gagliardi:

Q. Was there anyone who helped you start the business?

A. No. I mean Anthony lent me the money. His company was DTA, so he kind of, I borrowed the money from him to buy my first truck and things progressed from there.

Q. Anthony loaned you the money?

A. He put the money up, yes, and I’ve been paying him back.

Q. How much money?

A. It was \$50,000.

Q. Do you still have a loan or open account with him?

A. For the most part; I pay him each week.

Q. How much do you pay him each week?

A. I probably pay him about \$1,000 a week.

Q. Is this in writing?

A. No. He's my stepson; we didn't feel we needed anything in writing.

Q. But if you're paying him \$1000... how long have you been paying them?

A. Basically I've been paying him for a couple weeks, that's it.

*Gagliardi Tr. at 33.*

Vulpis' financing of NYC Materials is a shareholding disguised as a loan agreement. There are no written terms for this significant loan. There is no formal payment schedule. The "loan" is "not on [NYC Materials'] books." *Gagliardi Tr. at 73.* Indeed, although NYC Materials has operated for well over two (2) years, Gagliardi states that he only started repaying Vulpis around the same time that he was noticed for testimony before the Commission. See July 25, 2013 letter from Commission Staff to Gagliardi. The temporal relationship between the withdrawal of DTA (Vulpis' company) and the establishment of NYC Materials, and the fact that the company was established using a "loan" from Vulpis, is not the only evidence that Vulpis' role in NYC Materials is far greater than as a driver. In fact, NYC Materials was initially created in order to provide hauling services for a large project contracted to Vulpis' company, DTA. Gagliardi testified that Vulpis, through DTA, "found" this project in Flushing, New York, a contract valued at around \$750,000. *Gagliardi Tr. at 51, 74.* The following testimony is telling:

Q. Well, you starting this business two years ago?

A. Right.

Q. You stated that [Vulpis] lent you \$50,000 to start the business?

A. Right.

Q. And then he found you a three quarters of a million dollar job as your first job?

A. Right.

*Gagliardi Tr.* at 53-54.

The Commission should conclude that Vulpis financed NYC Materials so that he could benefit from the Flushing job without being subject to Commission scrutiny. Moreover, a confidential source who was present at the Flushing job site has told the Commission that Vulpis acted as the owner and manager of NYC Materials. This source had no idea who Gagliardi even was.

In addition to the timing of incorporation, the “loan,” and the fact that the company was created for the primary purpose of hauling materials for Vulpis’ company, there is additional evidence that Vulpis is an undisclosed principal of NYC Materials. Vulpis’ personal Facebook page includes numerous pictures of NYC Materials trucks. Specifically, one series of photos posted in 2012 include images of a NYC Materials truck that had apparently flipped over on the Long Island Expressway. *See Gagliardi Tr.* at 78, and Commission Exhibit 4. Through comments made on Facebook, Vulpis is asked “who’s [sic] truck?” Vulpis responds, “Mine,” and further states that he owns “about 7 of them.” *Id.*<sup>4</sup> Additionally, Danielle Gagliardi, Gagliardi’s daughter-in-law, comments to Vulpis: “Cheap labor will do it too hope you fired his ass!” *Id.* This comment makes clear that Vulpis has the ability to fire someone – not an ordinary role for a mere part-time driver.

Vulpis has a history of criminal convictions and employment with denied trade waste companies that are indicative of a person who lacks good character, honesty and integrity under Local Law 42. Vulpis has also sought to evade Commission scrutiny as a principal of his own company, by withdrawing its application after being noticed for a deposition. Therefore, Vulpis has sought to hide his control of NYC Materials, and use his step-father as a front for his business interests. However, the evidence demonstrates that Vulpis is clearly an undisclosed principal of NYC Materials.

**B. Michael Bonsera Jr., a Former Principal of a Company Previously Denied by the Commission, is an Undisclosed Principal of NYC Materials.**

The Application disclosed Bonsera as one of NYC Materials’ employees, but in actuality he is an undisclosed principal. Bonsera is well known to the Commission, as he is a denied principal of another C&D company.

Bonsera was a former principal in LMR Services Corp. (“LMR”), which was denied registration by the Commission in 2006. *See Denial Decision of LMR Services Corp.* The grounds for denial included failing to pay numerous judgments docketed against it by various federal, state and local agencies and courts, which amounted to approximately a quarter of a million dollars. *See Denial Decision of LMR Services Corp.*

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<sup>4</sup> Notably, at the time of these pictures, NYC Materials had still not disclosed any drivers or employees to the Commission, as required, likely in an attempt to evade the Commission’s scrutiny.

pg. 7-8. Moreover, LMR failed to comply with a Commission directive to return the trade waste plates it was issued. See Denial Decision of LMR Services Corp. pg. 8. Finally, LMR knowingly failed to provide information and documentation required by the Commission, including information regarding Bonsera's 2004 arrest for petit larceny. See Denial Decision of LMR Services Corp. pg. 9. Based on the denial, LMR, and therefore its principals, were found to lack good character, honesty and integrity.

Notably, Bonsera is the son of Michael Bonsera ("Bonsera Sr."), who was indicted<sup>5</sup> (and subsequently convicted) for his role in the rigging of bids for carting contracts at Federal Aviation Administrative sites at John F. Kennedy International Airport and other related locations. See People v. D'Ambrosio et al.; Press Release, District Attorney – New York County, November 12, 1996. Bonsera Sr. and the company he owned was also a defendant in a civil RICO action by the federal government, alleging organized crime control of the carting industry on Long Island. See United States v. Private Sanitation Industry Assoc. of Nassau/Suffolk Inc. et al.

Despite this dubious record, Gagliardi hired Bonsera as an employee of NYC Materials, purportedly as a driver. Mr. Bonsera's role is far greater than a driver, however. First, Gagliardi testified that he found all of his employees through Bonsera, and that most of NYC Material's employees were previously employees at Bonsera's denied company:

Q. Where do you find your employees?

A. I actually had this gentleman, Mike Bonsera -- most of the people who are there, he brought them in.

Q. How did he know all of these people?

A. At one time he owned a company. His company did not do well and he shut his doors down. A lot of these guys worked for him at one time.

Q. What company was that?

A. I believe it was LMR.

*Gagliardi Tr. at 38.*

Moreover, Gagliardi stated that Bonsera, besides being a truck driver, was also the dispatcher for NYC Materials, which for most companies is an important operational role for a trucking company. *Gagliardi Tr. at 36.* Bonsera was not disclosed as a dispatcher for NYC Materials on the Application.

<sup>5</sup> Bonsera Sr.'s company Bonsera, Inc. d/b/a Star Carting Company was also indicted.

Furthermore, Bonsera has been responsible for providing Gagliardi with most of his current business. When Gagliardi was asked about NYC Material's primary customers, he stated that there are approximately five (5) or six (6) large concrete companies that are responsible for the bulk of his "steady" business.<sup>6</sup> *Gagliardi Tr. at 67.* Gagliardi further testified that Bonsera was responsible for finding all of NYC Materials' major concrete customers:

Q. How did you find these companies?

A. One of the guys that worked for me, one of the drivers is Mike, he dealt –

Q. Mike Bonsera?

A. He dealt with all of these, and when he left, he kept all his contacts and that's how I got them.

*Gagliardi Tr. at 70.* Despite the fact that Bonsera is the company's dispatcher, and despite the fact that the company got its major customers through Bonsera, incredibly, Gagliardi testified that Bonsera is only paid \$25.00 per hour:

Q. What does Mike Bonsera get paid by you?

A. \$25 an hour.

Q. What about for all these contacts?

A. He doesn't want anything. Nothing.

Q. Nothing?

A. Nope, that was the agreement he had, he drives for me and that's all he does, and when he makes the sand delivery, he picks up the check.

Q. And you owe him for all of this business?

A. I guess if you want to look at it that way.

*Gagliardi Tr. at 70-71.* Skeptical of Gagliardi's statements as to his compensation of Bonsera, the Commission requested that NYC Materials provide materials such as W-2

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<sup>6</sup> Jenna, Ferrara Bros., Barker Materials, Advance Ready Mix, All American Transit Mix, Corona Ready Mix, Glenwood Masonry Supply, Superior Block.

and W-3 forms, 1098 & 1099 forms, cash receipts, and other documents that might shed light on Mr. Bonsera's actual earnings. See Letter from Commission staff dated August 22, 2013. As discussed more fully below, the Commission's request, and its numerous follow-up requests, was patently ignored.<sup>7</sup> The Commission should infer from this refusal to provide the requested document that Gagliardi's testimony seeking to minimize the role of Bonsera was false and would be refuted by the withheld documents.

**C. NYC Materials Knowingly Failed to Provide Information and Documentation Required by the Commission.**

During Gagliardi's interview, he testified that he is the only employee of NYC Materials who receives an actual paycheck. *Gagliardi* Tr. at 35. According to Gagliardi, NYC Materials' employees are paid in "cash," but are given a 1099 tax form at the end of each calendar year documenting their compensation. *Gagliardi* Tr. at 35. When asked if NYC Materials pays payroll taxes on its employees, Gagliardi indicated that his accountant handles this. *Gagliardi* Tr. at 83. Interested in understanding the exact compensation arrangements of NYC Materials' employees, especially considering the apparently indispensable employment of Vulpis and Bonsera, the Commission Staff requested the Registrant produce various payroll and accounting records. See August 22, 2013 letter from Commission Staff to Gagliardi. The letter gave NYC Materials until September 12, 2013 to produce the requested records.

On numerous occasions, beginning with the initial September 12, 2013 production deadline, NYC Materials failed to provide the Commission with these requested materials. On September 18, 2013, the Commission received a faxed retention letter from the Registrant's attorney, Randy Scott Zelin, Esq. ("Zelin"). See September 18, 2013 letter from Zelin to Commission Staff. On September 23, 2013, Commission Staff counsel spoke with Zelin regarding NYC Materials and the fact that the Commission's request for records was ten (10) days overdue. As an accommodation to Zelin, the Commission consented to a reasonable extension of time for NYC Materials to produce the requested materials so that Zelin could become familiar with his client and decide how to move forward. After approximately one (1) month, Zelin wrote to the Commission on October 16, 2013 stating that NYC Materials was working to provide the Commission with responsive documentation and is expected to turn over the first set of documents the following week (which would be from October 20-26, 2013). See October 16, 2013 letter from Zelin to Commission Staff. However, during the following weeks no documents were received from NYC Materials, nor were any correspondences sent from Zelin either asking for an extension of time or explaining NYC Materials' failure to meet its own production target.

Over the course of the next several months NYC Materials continued to be non-compliant to the Commission's request for records. Finally, on January 8, 2014 a final

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<sup>7</sup> Notably, NYC Materials has been represented here by the same counsel that represented Bonsera's denied company, LMR, before the Commission.

notice letter was sent via email by Commission Staff to Zelin, summarizing their course of dealings since September 2013 and giving a final deadline of January 17, 2014 for NYC Materials to produce books and records. See January 8, 2014 letter from Commission Staff to Zelin. Remarkably, only on the eve of the deadline did Zelin respond to this letter, whereby he asked for an extension of two (2) additional weeks due to other commitments. See January 16, 2014 letter from Zelin to Commission Staff. However, the response incredulously did not address NYC Materials' curing ongoing failures to provide records to the Commission or provide any details as to why it had failed to meet all reasonable expectations for production. Based on this record, the Commission denied NYC Material's request for extension. See January 22, 2014 letter from Commission Staff to Zelin. To this date, no records have been received by the Commission from NYC Materials.<sup>8</sup>

NYC Materials was warned that its Application could be denied for knowingly failing to provide the Commission with information. See January 8, 2014 letter from Commission Staff to Zelin. Despite this warning after months of noncompliance, NYC Materials and its counsel acted without any urgency and failed to produce the requested records, or provide good cause in seeking a further extension. The fact that a response by NYC Materials was only received on the eve of the final deadline, which failed to explain in any particularity grounds for an extension, only underscores the complete lack of candor the company had demonstrated toward the Commission since September 2013. Therefore, NYC Materials has knowingly failed to provide information and documentation required by the Commission.

#### **IV. BASIS OF DENIAL**

For the reasons set forth below, the Commission denies NYC Materials' Application.

##### **A. NYC Materials Failed to Disclose Anthony Vulpis, Jr. as a Principal.**

All applicants must provide truthful and non-misleading information to the Commission. The failure to do so is a ground for denial of the application. See Admin. Code §§ 16-509(a)(1) and 16-509(b); Attonito v. Maldonado, 3 A.D.3d 415 (1<sup>st</sup> 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 (1<sup>st</sup> Dept. 2008). Local Law 42 sets forth a broad definition of a principal, which includes all "persons participating directly or indirectly in the control of such business entity." See Admin. Code. § 16-501-d.

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<sup>8</sup> It should be noted that Zelin also represented LMR in its dealings with the Commission (Bonsera, a denied principal of LMR is now employed with NYC Materials) and used a similar tactic of continuously extending production deadlines, without ever providing the Commission with substantive records it requested.

NYC Materials' Application, which failed to disclose Vulpis as a principal, was false and misleading. NYC Materials was incorporated almost immediately after Vulpis withdrew the application for his trade waste company, DTA. Despite the fact that Vulpis was not disclosed at all on NYC Materials' Initial Application, Vulpis funded the company, albeit through a purported \$50,000.00 "loan" – a loan which was not in writing, which had no repayment terms, which was not on the books at all, and for which no repayment was made for years until the Commission noticed the deposition of Gagliardi. Likewise, NYC Materials was initially created for the sole purpose of transporting waste from one of Vulpis' jobs, for which it was paid \$750,000.00. Finally, Vulpis himself, through social media, admits that he owns and is in control of NYC Materials' trucks. Despite these facts, Vulpis was not disclosed at all in the Initial Application, and was only later disclosed as a driver, all in an effort to avoid Commission scrutiny.

Information regarding who is in control of an applicant business, who has contact with customers and who is responsible for oversight of the applicant's activities is crucial to the Commission's mission to ensure proper oversight of the carting industry. Undisclosed principals and employees make proper oversight impossible and provide inroads for the reemergence of the type of criminal activity that historically has had a stranglehold on the industry. The failure of NYC Materials to provide truthful and non-misleading information to the Commission about who is a principal of the company is evidence that NYC Materials lacks good character, honesty and integrity. The Commission therefore finds that NYC Materials lacks good character, honesty, and integrity, and on this independent ground, denies its Application. See Admin. Code §§16-509(a)(i); 16-509(b).

**B. The Undisclosed Principal, Anthony Vulpis Jr., has been Convicted of a Racketeering Activity.**

The Commission may refuse to issue a license to an applicant that has committed a racketeering activity "including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influence 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..." See Admin. Code §§16-509(a)(v).

Vulpis pleaded guilty to Criminal Sale of a Controlled Substance in the 3<sup>rd</sup> Degree, Pl. 220.39, and (along with a conviction for Attempted Criminal Mischief in the 4<sup>th</sup> Degree) was sentenced to 1-3 years imprisonment. The offense of Criminal Sale of a Controlled Substance in the 3<sup>rd</sup> Degree, Pl. 220.39, falls within the meaning of "racketeering activity" under both 18 U.S.C. § 1961 and section 460.10 of the penal law.

The Commission therefore finds that NYC Materials lacks good character, honesty, and integrity, and on this independent ground, denies its Application. See Admin. Code §§16-509(a)(v).

**C. NYC Materials Failed to Disclose Michael Bonsera Jr. as a Principal.**

All applicants must provide truthful and non-misleading information to the Commission. The failure to do so is a ground for denial of the application. See Admin. Code §§ 16-509(a)(1) and 16-509(b); Attonito v. Maldonado, 3 A.D.3d 415 (1<sup>st</sup> 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 (1<sup>st</sup> Dept. 2008). Local Law 42 sets forth a broad definition of a principal, which includes all “persons participating directly or indirectly in the control of such business entity.” See Admin. Code. § 16-501-d.

NYC Materials’ Application, which failed to disclose Bonsera as a principal, was false and misleading. Gagliardi’s statements indicate that Bonsera was much more than a driver. First, most of the employees that NYC Materials has were brought in by Bonsera from his former company, LMR. Second, of the 5-6 concrete companies that NYC Materials’ delivers to, all of them were obtained through Bonsera. Finally, although only disclosed as a driver, Bonsera is a dispatcher for NYC Materials, meaning he determines what trucks go where. While Bonsera’s payroll and employment records would have also been helpful in assessing his role in NYC Materials, the Registrant’s failure to produce said records casts substantial doubt on Gagliardi’s statement that Bonsera is only paid \$25 per hour. Moreover, such failure to provide records supports an inference that NYC Materials is hiding information. It is therefore reasonable to assume that based on Bonsera’s previous involvement in a denied company, NYC Materials purposely sought to minimize his role for this Commission. See Admin. Code §§16-509(a)(i); 16-509(b).

**D. The Undisclosed Principal, Michael Bonsera, Jr., was Previously the Principal of a Company that was Denied a Trade Waste Registration by the Commission.**

Bonsera was a principal in LMR, which was denied a registration to operate as a trade waste business in New York City. LMR failed to pay numerous judgments entered against it by various federal, state and local entities and courts, which led to it being ineligible for continued registration. Moreover, LMR failed to return its trade waste plates, despite being directed by the Commission to do so. Bonsera, as a principal of LMR, is culpable for its failures to satisfy these obligations and obey the directives of the Commission. Furthermore, Bonsera was responsible for LMR’s delay tactics and silence when asked by the Commission to provide evidence of satisfaction of these judgments. Gagliardi knew that LMR had gone out of business, and he also should have known that the company was denied a registration with the Commission.

NYC Materials carries the burden of rebutting the presumption that Bonsera lacks good character, honesty and integrity. NYC Materials has not presented any evidence to do so, and has instead sought to bury Bonsera’s role in the company as a mere driver when Gagliardi’s testimony indicates that Bonsera is an undisclosed principal of the company.



The Commission therefore finds that NYC Materials lacks good character, honesty, and integrity, and on this independent ground, denies its Application. See Admin. Code §§16-509(a); 16-509(b).

**E. NYC Materials Failed to Provide Information and Documentation Required by the Commission.**

“The commission may refuse to issue a license or registration to an applicant for such license or an applicant for registration who has knowingly failed to provide the information and/or documentation required by the commission pursuant to this chapter or any rules promulgated pursuant hereto.” See Admin. Code §16-509(b); Attonito, 3 A.D.3d 415. By failing to respond to the Commission’s requests, NYC Materials has “knowingly failed to provide the information” required by the Commission. Therefore, the Commission denies NYC Materials’ Application on this independently sufficient ground.

Beginning on August 22, 2013, the Commission requested various payroll and accounting records from NYC Materials, which to date have not been forthcoming. See August 22, 2013 letter from Commission Staff to NYC Materials; January 8, 2014 letter from Commission Staff to Zelin.

After missing its initial September 12, 2013 production deadline, on September 23, 2013, NYC Materials was granted a reasonable extension to provide the requested documents. After one (1) month, Zelin wrote to the Commission that he expected the first set of documents to be produced the following week, but none were received either that week or in the months following. See October 16, 2013 letter from Zelin to Commission Staff. In response, after months of patient waiting, the Commission granted NYC Materials one final extension of time to comply. See January 8, 2014 letter from Commission Staff to Zelin. Zelin’s response, which was a request for a further time extension, was received on the eve of the deadline and did not provide any explanation as to why NYC Materials has continued to be non-compliant with the Commission or set forth any good cause for a further extension. See January 16, 2014 letter from Zelin to Commission Staff. Therefore, this request for extension was denied. See January 22 letter from Jared Rosen to Commission Staff.

NYC Materials was warned that its Application could be denied for knowingly failing to provide the Commission with information. See January 8, 2014 letter from Commission Staff to Zelin. Despite these warnings, as of the date of this decision, the Registrant has knowingly failed to provide information and documentation required by the Commission. For this independent reason, the Application is denied. See Admin. Code §16-509(b).

V. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license or registration to any applicant that it determines is lacking in good character, honesty and integrity. The record as detailed above demonstrates that NYC Materials falls short of that standard. Accordingly, based on the above independently sufficient reasons, the Commission denies NYC Materials Corp.'s registration renewal application.

This denial is effective immediately. NYC Materials Corp. may not operate as a trade waste business in the City of New York.

Dated: November 20, 2014



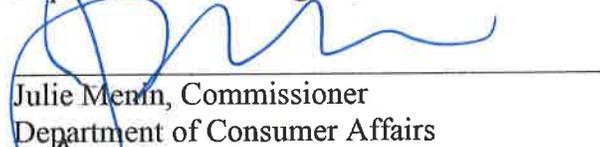
Daniel D. Brownell  
Commissioner and Chair



Kathryn Garcia, Commissioner  
Department of Sanitation



Mark Peters, Commissioner  
Department of Investigation



Julie Menn, Commissioner  
Department of Consumer Affairs



Andrew Schwartz, Deputy Commissioner  
Department of Small Business Services



John Denesopolis, Inspector (Designee)  
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