



The City of New York
BUSINESS INTEGRITY COMMISSION
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**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE
REGISTRATION RENEWAL APPLICATION OF ROSE DEMOLITION AND
CARTING INC. (BIC #769) TO OPERATE AS A TRADE WASTE BUSINESS**

I. PRELIMINARY STATEMENT

On October 26, 2016, Rose Demolition and Carting Inc. (“Rose” or the “Applicant”) (BIC #769) applied to the New York City Business Integrity Commission to renew an exemption from licensing requirements and a registration to operate a trade waste business “solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation” (the “2016 Renewal Application”).¹ Local Law 42 of 1996 authorizes the Commission to review and make determinations on such exemption applications. See Title 16-A, New York City Administrative Code § 16-505(a).

On January 5, 2017, the Commission’s staff issued and served the Applicant with the Notice of Grounds to Recommend the Denial of the License Application of Rose (the “Notice”). The Applicant was given 10 business days to respond, until January 20, 2017. See Rules of the City of New York (“RCNY”) § 2-08(a). On January 20, 2017, the Applicant submitted a response, which consisted of a two-page letter from the Applicant’s attorney. (the “Response”). See Response. The Commission has completed its review of the 2016 Renewal Application, having carefully considered both the Notice and the Response. Based on the record as to the Applicant, the Commission denies Rose’s 2016 Renewal Application because the Applicant lacks good character, honesty, and integrity based on the following two independently sufficient grounds:

- 1. The Applicant was recently convicted of offering a false instrument for filing in the first degree, a class E felony; and**
- 2. The Applicant and its principal, Timothy Doheny, provided the Commission with false and misleading information.**

¹ “Trade waste” or “waste” is defined at Admin. Code § 16-501(f)(1) and includes “construction and demolition debris.”

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, known as trade waste. 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. Int'l Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993); People v. Ass'n of Trade Waste Removers of Greater New York Inc., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); United States v. Mario Gigante, No. 96 Cr. 466 (S.D.N.Y.); People v. Ass'n of Trade Waste Removers of Greater New York, 701 N.Y.S.2d 12 (1st Dep't 1999). The construction and demolition debris removal sector of the City's carting industry specifically has also been the subject of significant successful racketeering prosecutions. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992); United States v. Cafra, No. 94 Cr. 380 (S.D.N.Y.); United States v. Barbieri, No. 94 Cr. 518 (S.D.N.Y.).

The Commission is charged with, among other things, combating the 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). This regulatory framework continues to be the primary means of ensuring that an industry once overrun by 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.

Pursuant to Local Law 42, a company "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation," also known as construction and demolition debris, must apply to the Commission for an exemption from the licensing requirement. Id. If, upon review of an application, the Commission grants an exemption from the licensing requirement, it issues the applicant a Class 2 registration. Id. at § 16-505(a)-(b). Before issuing a registration, the Commission must evaluate the "good character, honesty and integrity of the applicant." Id. at § 16-508(b); see also id. at § 16-504(a). An "applicant" for a license or registration means both the business entity and each principal of the business. Id. at § 16-501(a).

The Administrative Code provides an illustrative list of relevant factors for the Commission to consider in determining whether to grant an application for a license or registration:

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.

Id. at § 16-509(a)(i)-(x). See also id. at § 16-504(a).

The Commission also 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 § 16-509(b). See also 16-509(a)(i) (failure to provide truthful information in connection with application as a consideration for denial); Elite Demolition Contracting Corp. v. The City of New York, 4 N.Y.S.3d 196, 125 A.D.3d 576 (1st Dep’t 2015); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424 (1st Dep’t 2008); Attonito v. Maldonado, 3 A.D.3d 415 (1st Dep’t) (Commission may deny an application for an exemption “where the applicant fails to provide the necessary information, or knowingly provides false information”); leave denied 2 N.Y.3d 705 (N.Y. 2004). In addition, the Commission may refuse to issue a license or registration to an applicant that “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 § 16-509(c); see also id. at § 16-504(a). Finally, the Commission may refuse to issue a license or registration to any applicant when the applicant or its principals have previously had a license or registration revoked. Id. at § 16-509(d); see also id. at § 16-504(a).

An applicant for a private carting license (including a registration for hauling construction and demolition debris) 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 Indus., 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).

III. FACTS

The Applications

On or about September 20, 1996, the Applicant applied to the Commission for an exemption from licensing requirements and a registration to operate as a trade waste business that removes construction and demolition debris. See Application for Exemption From Licensing Requirement for Removal of Construction and Demolition Debris (the “Registration Application”). On or about July 24, 2002, the Commission granted the Applicant an exemption and issued it a Class 2 Registration. See Registration Order issued

to Rose Demolition and Carting Inc. (the “Registration Order”). The Applicant’s registration was effective for two years and expired on July 31, 2004. See id.

On or about July 29, 2004, the Applicant filed its first Renewal Application for a License or Registration as a Trade Waste Business. See 2004 Renewal Application for License or Registration as a Trade Waste Business (the “2004 Renewal Application”). Between July 5, 2006 and August 12, 2014, the Applicant filed five more renewal applications. See 2006 Renewal Application for License or Registration as a Trade Waste Business, dated July 5, 2006 (the “2006 Renewal Application”); 2008 Renewal Application for License or Registration as a Trade Waste Business, dated June 26, 2008 (the “2008 Renewal Application”); 2010 Renewal Application for License or Registration as a Trade Waste Business, dated July 21, 2010 (the “2010 Renewal Application”); 2012 Renewal Application for License or Registration as a Trade Waste Business, dated June 21, 2012 (the “2012 Renewal Application”); 2014 Renewal Application for License or Registration as a Trade Waste Business, dated August 12, 2014 (the “2014 Renewal Application”). The Commission granted each of these applications, issuing the Applicant a registration renewal.

Each of the above-mentioned renewal applications asked the following question:

Have you or any of your principals, employees, or affiliates been convicted of any criminal offense in any jurisdiction, or been the subject of any criminal charges in any jurisdiction?

The Applicant answered this question in the negative on each of the renewal applications.² See 2004 Renewal Application at 2; 2006 Renewal Application at 2; 2008 Renewal Application at 2; 2010 Renewal Application at 3; 2012 Renewal Application at 3; 2014 Renewal Application at 3. On all six of the above-noted renewal applications, the Applicant’s principals certified that the “information given in response to each question and in the attachments is complete and truthful.” See 2004 Renewal Application at 9; 2006 Renewal Application at 9; 2008 Renewal Application at 11-12; 2010 Renewal Application at 12, 14; 2012 Renewal Application at 12, 14; 2014 Renewal Application at 12, 15.

On or about October 26, 2016, the Applicant filed its seventh renewal application with the Commission. See 2016 Renewal Application. This Denial Decision addresses the 2016 Renewal Application.

The 2013 Criminal Case Against the Applicant

On or about June 3, 2013, the Applicant was charged with the crime of offering a false instrument for filing in the first degree, a class E felony. See Superior Court

² The Applicant’s 2016 Renewal Application disclosed that the Applicant had been convicted of a criminal offense in 2013. Notably, five months earlier, one of the Applicant’s principals was interviewed by the Commission’s staff. During the interview, the Commission’s staff raised the issue of the Applicant’s false and misleading response to the question regarding criminal convictions on the 2014 Renewal Application.

Information, People of the State of New York v. Rose Demolition & Carting, Inc. This charge was filed more than one year prior to the Applicant's submission of the 2014 Renewal Application stating that it had never been charged with a crime.

According to the Superior Court Information in the matter, on or about April 15, 2011, the Applicant, "knowing that a written instrument, contained a false statement and false information, and with intent to defraud the state ... offered and presented it to a public office, ... with the knowledge and belief that it would be filed with, registered and recorded in and otherwise become part of the records of such public office ..." See id. The Applicant maintained "unreported cash payrolls and falsified tax returns ... for the years 2007-2011 ..." See plea agreement between the New York County District Attorney's Office and Timothy Doheny, James Baker and Rose Demolition & Carting, Inc., dated May 23, 2013. In doing so, the Applicant failed to report \$276,000 in income, thereby underpaying the State and City of New York. See felony complaint, People of the State of New York v. Rose Demolition & Carting, Inc.

On June 18, 2013, the company pleaded guilty to the charge. See Certificate of Disposition. The Applicant was sentenced to a conditional discharge and was required to pay \$443,927 in back taxes, penalties and interest. See plea agreement. The Applicant also agreed to forfeit \$200,000 to the New York County District Attorney's Office. See id. Thus, the Applicant's felony conviction occurred more than one year prior to the Applicant's submission of the 2014 Renewal Application.

The 1997 Criminal Case Against Principal Timothy Doheny

In addition to failing to disclose the Applicant's 2013 criminal conviction in the 2014 Renewal Application, Applicant also failed to disclose on the 2014 Renewal Application and on each of the five prior Renewal Applications filed with the Commission that Timothy Doheny -- a principal of the Applicant -- had been charged with and convicted of a crime. On or about July 14, 1997, Doheny was indicted in the Commonwealth of Massachusetts and was charged with several felonies including three counts of organizing or promoting gambling and three counts of conspiracy to organize and promote gambling. See Middlesex Superior Court Case Summary/Criminal Docket. On or about November 21, 1997, Doheny pleaded guilty to two counts of organizing or promoting gambling facilities or services, both felonies. He was sentenced to a suspended sentence of 18 months in prison, two years' probation, and a \$5,000 fine.³ See id.

³ Newspapers reported that in addition to members of the Boston College football team being involved, an individual with links to organized crime was involved in the criminal scheme. Jon Marcus, Prosecutor: BC Gambling Money Went to Organized Crime, ASSOCIATED PRESS NEWS ARCHIVE, January 17, 1997; Peter Donahue, Luke Cyphers, Gambling Ring Collar Queens Man Tied to BC Betting, NEW YORK DAILY NEWS, January 18, 1997; See Organized Crime Tied to Betting Scandal, NEW YORK TIMES, January 18, 1997; Six Are Indicted for Gambling, PHILLY.COM, July 16, 1997.

Sworn Testimony of Timothy Doheny

On June 1, 2016, the Commission's staff interviewed Doheny under oath. See Transcript of Sworn Interview of Timothy Doheny ("Doheny Tr."). In addition to signing the certification attached to the 2014 Renewal Application, Doheny testified that he reviewed the 2014 Renewal Application and that all of the answers provided in that application were truthful. See id. at 11-12. When asked about the false response to the question regarding criminal charges and convictions on the 2014 Renewal Application, Doheny first maintained that the response was accurate. See id. at 12. Eventually, he testified that he had misunderstood the question. See id. at 12-14. Doheny claimed that he interpreted the question to seek information about whether "the individuals, myself and James Baker" had been convicted of a crime. Id. at 13. During his testimony, Doheny even changed the question to fit his false answer regarding the 2013 crime committed by the Applicant:

If the question is, Have the applicant's principals, employees or affiliates been arrested, convicted, or been the subject of a criminal charge, the answer is no. But Rose Demolition has been convicted of a criminal charge. That I know. But that's not the way I read this. I read this as the principals or employees been convicted.

Id. at 13.

Doheny also admitted that the Applicant violated the Commission's rules by failing to notify the Commission of the criminal charges and of the criminal conviction.⁴ See Title 17 of the Rules of the City of New York § 2-05(b)(iii). When he was asked why he failed to report the charges and the conviction to the Commission, Doheny responded, "I didn't feel that I had to." Doheny Tr. at 22.

Although Doheny claimed that his understanding of the question regarding criminal charges and convictions related to crimes committed by principals or employees, he (as one of the Applicant's principals) also provided the Commission with false and misleading information concerning his own criminal history, failing to disclose -- on six different renewal applications -- that he had been the subject of criminal charges and that he had been convicted of a crime. During his sworn interview, Doheny continued to be less than forthcoming about his criminal history. When asked if he had ever been arrested, Doheny answered that he had been arrested about a year prior and that the case had been "vacated." Id. at 28. He was then asked if he had been arrested on any other occasion:

⁴ In committing this crime, the Applicant also violated the terms of its Registration Order. Among other things, when the Registration Order was signed, the Applicant agreed that it would (a) "not violate any law of the United States of America or the State of New York;" (b) "timely file all tax returns and timely pay all taxes due and owing in any jurisdiction;" (c) "timely notify the Commission of any material changes in the information set forth in its Application or any other submitted materials;" and (d) "disclose to the Commission any violation of law known to the Applicant and relating to the trade waste removal business in New York City." See Registration Order.

Q.: And any other arrests besides that incident?

A.: No.

Q.: Were you arrested in Massachusetts in 199[7]?

A.: My God. Was I arrested? I'm not sure if I was. There was an incident in 1995 but I don't know if I was technically ever arrested.

Id. at 29. After speaking with his attorney, Doheny eventually testified that in 1997 he was "indicted for several felonies related to bookmaking." Id. at 30. He also admitted that he pleaded guilty to the crimes. See id.

IV. BASIS OF DENIAL

1. The Applicant was recently convicted of offering a false instrument for filing in the first degree, a class E felony.

In making a determination as to an applicant's good character, honesty and integrity, Administrative Code § 16-509(a)(iii) expressly permits the Commission to consider the conviction of an applicant for a crime which, considering the factors set forth in Correction Law § 753, would provide a basis for the refusal of such license or registration.⁵ The factors to be considered are as follows:

- (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license or employment 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 or 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.

⁵ The Administrative Code defines an "Applicant" as "the entity [that applies to the Commission] and each principal thereof." See Admin Code § 16-501(a).

- (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 or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

See Correction Law § 753.

In June 2013, the Applicant was charged with and pleaded guilty to the crime of offering a false instrument for filing in the first degree, a class E felony. This conviction relates to the Applicant's creation of a cash payroll to pay its workers and the Applicant's failure to remit state and city payroll taxes. In committing this crime, the Applicant falsified several years of its state and city tax returns by underreporting its income.

As the Applicant is a Class 2 Registrant of the Commission, the conviction clearly relates directly to the construction and demolition debris removal industry. Additionally, the conviction occurred within the last four years, and the Applicant's principals were both in their late 30s when the crime was committed. Accordingly, the Applicant cannot maintain that the crime occurred long ago or was attributable to youthful indiscretion. See Correction Law § 753(1)(d) and (e). Furthermore, this criminal behavior is not an aberration: as discussed above, in 1997, Doheny (one of the Applicant's principals) was convicted of felony offenses in Massachusetts.

In the Response, the Applicant refuses to acknowledge that it committed a crime, even though it pleaded guilty to a felony in 2013. Instead, the Applicant refers to its criminal conduct as a "2013 tax matter," and a "2013 event." See Response at 1. The Applicant argues that after the applicant paid a "sum certain . . . the matter was discharged. The discharge of this matter results in the absence of a requirement to notify the Commission staff of a conviction." The Applicant's argument, which is legally incorrect, attempts to avoid the fact that the Applicant was convicted of a crime. The conditional discharge was a sentence imposed after a guilty plea to a felony. Moreover, the Applicant did not provide any evidence to substantiate the claim that there was no conviction.

After balancing the factors set forth in Correction Law § 753, and considering the Response, the Commission finds that the recent conviction of the Applicant provides a basis to deny the 2016 Renewal Application. The Commission thus denies the 2016 Renewal Application based on this independently sufficient reason.

2. The Applicant and its principal, Timothy Doheny, provided the Commission with false and misleading information.

All applicants must provide truthful and non-misleading information in connection with an application. See Admin. Code §16-509(a). A knowing failure to do so is a ground for denial of the application. See id.

a. False and misleading information on the renewal applications.

As set forth above, the Applicant provided false and misleading information in responding to the question on the 2014 Renewal Application relating to criminal charges and convictions. Specifically, the Applicant answered that it had never been arrested, convicted of, or been the subject of criminal charges in any jurisdiction. The Applicant's answer was false because the Applicant was the subject of criminal charges, to which the Applicant pleaded guilty in 2013.

The Applicant also provided false and misleading information to the Commission when it failed to disclose on each of the six renewal applications it filed every two years from 2004 to 2014 that principal Timothy Doheny was the subject of criminal charges and was convicted in 1997. Specifically, the Applicant answered that Doheny had never been convicted of any criminal offense in any jurisdiction or been the subject of any criminal charges in any jurisdiction. Those answers were false: Doheny was charged with and pleaded guilty to felony charges in 1997.

The Response does not address this ground aside from arguing that the "2013 matter" was discharged, and as a result the Applicant did not have to notify the Commission if it had been arrested, convicted of, or been the subject of criminal charges. See Response at 1. As discussed above, the Applicant's argument is legally incorrect. The Applicant was charged with and convicted of a crime. In addition, the Response did not address the fact that the Applicant provided false and misleading information to the Commission on six different renewal applications about Doheny's 1997 criminal conviction.

b. False and misleading testimony under oath.

At his sworn interview, Doheny also provided false and misleading information to the Commission's staff. He first reaffirmed the false answer regarding criminal charges and convictions in the 2014 Renewal Application. Doheny then provided the excuse that he misunderstood the question, claiming that he believed that it sought information about criminal charges brought against a principal or employee, rather than against the applicant business. If Doheny had actually thought the question asked for criminal charges and convictions of principals or employees, he would have disclosed his 1997 criminal conviction. However, he did not disclose that criminal conviction to the Commission until he was questioned about it during his sworn interview. Even then, he first denied that he had been arrested, then claimed ignorance about the arrest, before he finally admitted to having been arrested and convicted. Thus, Doheny's sworn testimony was false and misleading because Doheny had, in fact, been convicted of criminal charges.

Rose claims in its Response that the Commission relied on a “misstatement” of Doheny’s sworn testimony. It further claims that because Doheny “specifically discussed the [1997] conviction during the deposition” that the recommendation was “based on an incorrect record.” See Response at 1. After a review of the record, we find that the Applicant’s claim on this ground must fail. While Doheny ultimately conceded that he was convicted in 1997, he only did so after repeatedly denying any prior convictions. See Doheny Tr. at 29. The Response did not address Doheny’s false and misleading testimony about why the Applicant failed to disclose the Applicant’s 2013 conviction in the 2014 Renewal Application.⁶

In sum, the Applicant and Doheny provided false and misleading information to the Commission and its staff on numerous occasions, through certified answers in multiple renewal applications and sworn testimony. This conduct demonstrates that the Applicant lacks the requisite good character, honesty and integrity to operate a trade waste business in New York City. For this independently sufficient reason, the Commission denies the 2016 Renewal Application.

V. CONCLUSION

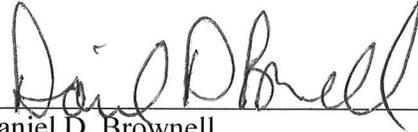
The Commission is vested with broad discretion to refuse to issue a license or an exemption from the license requirement to any applicant it determines lacks good character, honesty and integrity. The record as detailed herein demonstrates that Rose lacks those essential qualities. Accordingly, based on the two independently sufficient grounds detailed above, the Commission denies the 2016 Renewal Application of Rose Demolition and Carting Inc.

⁶ Although the Response incorrectly claims that the criminal conviction was “discharged,” at his sworn interview, Doheny (who was accompanied by an attorney) did not testify that he thought that the conviction was discharged. Instead, after first claiming to have misread the question, Doheny stated, “yes, Rose has been convicted of a criminal charge.” See Doheny Tr. at 12-13.

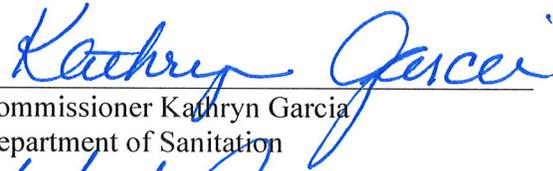
This denial decision is effective immediately. Rose Demolition and Carting Inc. may not operate as a trade waste business in the City of New York.

Dated: March 31, 2017

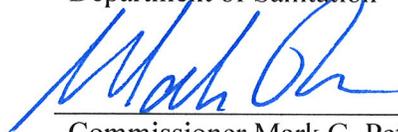
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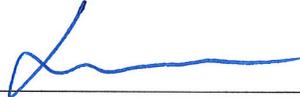
Daniel D. Brownell
Commissioner and Chair



Commissioner Kathryn Garcia
Department of Sanitation



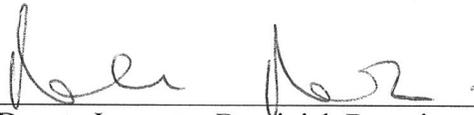
Commissioner Mark G. Peters
Department of Investigation



Commissioner Lorelei Salas
Department of Consumer Affairs



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Department of Small Business Services



Deputy Inspector Dominick Dorazio
(Designee)
New York City Police Department