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THE CITY OF NEW YORK  
TRADE WASTE COMMISSION  
253 BROADWAY, 10TH FLOOR  
NEW YORK, NEW YORK 10007

**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**

Park Rubbish Removal, Inc., ("Park") and Dynamic Rubbish Removal, Inc., ("Dynamic") (collectively, the "Piccolo companies") applied to the New York City Trade Waste Commission for licenses to operate as trade waste businesses pursuant to Local Law 42 of 1996.<sup>1</sup> 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 trade waste removal industry in New York City, was enacted to address pervasive organized crime and other corruption in the commercial carting industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

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 as to the Applicants, the Commission denies their license applications on the ground that these applicants lack good character, honesty, and integrity for the following independent reasons:

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<sup>1</sup> A related company, B.J. Piccolo Private Sanitation Inc. ("B J Piccolo") was allowed to withdraw its application for a trade waste license on May 1, 2000.

- (1) The applicants, through their principal, Anthony Piccolo, improperly joined with other carting companies to target a company under federal trusteeship, engaging in both predatory pricing and efforts to prevent independent companies from entering the New York City market;
- (2) Anthony Piccolo was on the Board of the Kings County Trade Waste Association and has knowingly failed to provide information and provided false information regarding his service on the Board;
- (3) The Applicants have failed to provide truthful information to the Commission in connection with their license applications; and
- (4) The Applicants have obstructed the Commission's investigations by repeatedly and knowingly failing to provide documents required by the Commission pursuant to a licensing investigation.

## **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 has 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 has 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 Tamilly 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 3½ 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 (1<sup>st</sup> 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 confirm the judgment of the Mayor and the City Council in enacting Local Law 42, and creating the Commission, to address this pervasive problem.

## **B. Local Law 42**

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs (the "DCA") 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). Although Local Law 42 became effective immediately, carting licenses previously issued by the DCA remained valid pending decision by the Commission on timely filed license applications. See Local Law 42, §14(iii)(a). The Applicants hold DCA licenses and timely submitted a license applications to the Commission.

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

Park and Dynamic filed applications for trade waste removal licenses with the Commission on August 30, 1996. The Commission's staff has conducted an investigation of the Applicants, which included the depositions of principals Toni Piccolo Hyzdu, Anthony Piccolo and Phillip Fasulo. On December 4, 2001, the staff issued a 24-page recommendation that Park and Dynamic's license applications be denied. As stated in the recommendation, the Applicant had ten business days from the date of the recommendation to respond. By oral agreement between the Commission's staff and the Applicant's attorney, the Applicant was permitted to submit the response to the Commission by 9:00 A.M. on December 20, 2001. However, at 12:00 P.M. on December 20, 2001, Park and Dynamic submitted a 9-page response to the staff's recommendation. The Commission has carefully considered both the staff's recommendation and the Applicant's response. For the independently sufficient reasons set forth below, the Commission finds that Park and Dynamic lack good character, honesty, and integrity, and denies their license applications.

During the background investigation, the Applicants have failed in their testimony and written submissions to provide clear information about who is and who is not a principal of Park and Dynamic and what role Anthony Piccolo has played and continues to play in the business of each. The Applicants have recently sought to deny or, where they do not deny, to minimize the role of Anthony Piccolo in the Applicant companies. It is therefore necessary at the outset to briefly describe what the weight of the available evidence establishes on these basic and seemingly simple questions. In doing so, it will also become clear that the operations and ownership of the Applicants are so intertwined that their applications must be considered together.

Operationally, it is difficult to distinguish these companies. Park and Dynamic have occupied the same office and garage space for many years.<sup>2</sup> Until its apparent demise, the office and garage of B.J. Piccolo were located at the same premises.<sup>3</sup> Park and Dynamic have the same phone number, (718) 444-7487. The employees of Park and Dynamic work for either company, indistinguishably. Many of the employees of Park also work for Dynamic and vice versa. See Transcript of Deposition of Toni Piccolo Hyzdu, ("Piccolo Hyzdu Tr.") at 22. The same was true of the employees of B.J. Piccolo before it allegedly went out of business. See Dynamic Lic. App. at 90; see also Park Lic. App. at 90; see also B.J. Piccolo Lic. App. at 113. Even those employees who are not formally listed as employees of the Applicants, likely perform duties that benefit them all. Toni Piccolo acknowledged as much: "It's the same office so if they are answering the phone for one company, they would be answering the phone for another." See Piccolo Hyzdu Tr. at 22. The Operations Manager thought of Park and Dynamic as practically indistinguishable: "... to me it's Dynamic Rubbish Removal. Park is another part of the roll-off but to me it's the same." See Transcript of Deposition of Philip Fasulo on May 22, 2001 ("Fasulo Tr.") at 7. The Applicants, along with B.J. Piccolo, belonged to the Kings County Trade Waste Association and all resigned on the same date by means of the same letter. See, May 10, 1996 letter to Kings County Trade Waste Association from Anthony Piccolo and Toni Piccolo Hyzdu.<sup>4</sup>

Anthony Piccolo, the father of Toni Piccolo Hyzdu, has played a prominent role in all three companies. He has solicited customers for both Park and Dynamic. See Transcript of Deposition of Anthony Piccolo on September 5, 2001 ("Piccolo Tr.") at 49. He interviewed prospective Park and Dynamic employees prior to their employment. Id. Dynamic listed Anthony Piccolo as a "manager" in its license application. Dynamic Lic. App. at 83. He is listed as a "principal" of Park from April 1989 to the "present" in Park's application. Park Lic. App. at 83. Piccolo submitted principal disclosure forms for himself as part of both Park's and Dynamic's license applications.

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<sup>2</sup> Park and Dynamic's offices are located at 513B Acorn Street in Deer Park, New York. For many years their garages were both located at 9715 Ditmas Ave. in Brooklyn where Park still has its garage. Park Lic. App. at 1. Dynamic Lic. App. at 1. Dynamic recently moved its garage to 350 Beach 80<sup>th</sup> in Brooklyn.

<sup>3</sup> B.J. Piccolo Lic. App. at 1.

<sup>4</sup> Curiously, the letter also requests that any monies that the Association receives *in the future* from the Piccolo Companies be used by the Association for "legal assessments." Id.

More telling, perhaps, on the issue of the overlapping operations of these companies and Anthony Piccolo's role are admissions made by Anthony Piccolo himself, when he was less concerned with minimizing his role in these companies. In litigation with the Commission in 1997 in U.S. District Court for the Eastern District of New York, all three Piccolo companies sued the Commission together as plaintiffs in an attempt to overturn an adverse decision by the Commission on the Piccolo companies' application for waivers from the 30-day contract terminability provision of Local Law 42.<sup>5</sup> In the course of the litigation, Anthony Piccolo submitted an affidavit to the Court, dated February 20, 1997, on behalf of all three companies. See Affidavit of Anthony Piccolo in Opposition to Cross-Motion and In Support of Main Application, February 20, 1997 ("Piccolo Aff."). Piccolo signed the affidavit as President of B.J. Piccolo, and "on behalf of Dynamic Rubbish Removal, Inc. and Park Rubbish Removal, Inc." Piccolo Aff. at 16. Although inartfully drafted, Piccolo refers to himself and his daughter, Toni Piccolo Hyzdu, as principals of the Piccolo companies. Piccolo Aff. at 2 (" . . .the Plaintiff corporations or its principals Ant[h]ony Piccolo or Toni Piccolo Hyzdu . . ."). In the affidavit, Anthony Piccolo admits that he "solicited customers for the express purpose of increasing business of Dynamic." Piccolo Aff. at 6. He refers to a Dynamic customer as "my customer" and attests to his familiarity with the smallest details of service of Park and Dynamic customers, including the amount of refuse they generate, the cost to the penny of installing a compactor at their premises of a particular customer, and the reason that parts of a Park service agreement were left blank. Piccolo Aff. at 3-4. Throughout the affidavit, Piccolo speaks in the first person when referring to customers, thus referring indifferently to the customers of all three Piccolo companies. Piccolo Aff. at 6.<sup>6</sup> Anthony Piccolo makes representations to the Court on behalf of the principals and employees of Park, Dynamic, and B.J. Piccolo. Piccolo avers that no principal or employee of the Piccolo companies had ever been held in contempt<sup>7</sup> (Piccolo Aff. at 5). Consistent with his role as principal and spokesman for the Piccolo companies, Anthony Piccolo has in correspondence with the Commission spoken for and kept the Commission apprised of developments occurring in the Piccolo companies. *See, e.g.,*

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<sup>5</sup> *B.J. Piccolo Private Sanitation, Inc. et al. v. City of New York*, CV 97-00181 (EDNY) (DRT).

<sup>6</sup> *See, e.g.,* Piccolo Aff. at 3 ("I contacted my customer . . .") and 14 ("Recently, I have lost the following customers . . ."). At his deposition, Piccolo admitted that he considers his daughter's customers to be his customers. Piccolo Tr. at 48-49.

<sup>7</sup> Anthony Piccolo later contradicted this assertion at his deposition when he testified that both he and his employee Andrew DeCarlo had been held in contempt. See Piccolo Tr. at 85.

January 31, 1998 letter (letter listing all active and terminated drivers in 1997 for the Piccolo companies).

The Applicant's response to the staff's recommendation barely merits a reply on this point. Nowhere does it address the factual basis for the staff's conclusion that Anthony Piccolo is a principal of Park and Dynamic and ultimately all but concedes the point. See Verified Response to Recommendation of Denial of License Application ("Response") at 4-5 (admitting "Anthony Piccolo's involvement with these companies."). Before doing so however, the Applicant's claims, contrary to logic and the plain text of Local Law 42, that the staff's recommendation stands or falls on whether Anthony Piccolo is an owner of the Applicants, not whether he is a principal. *Id.* at 3. The Response then pretends that the only evidence on *that* question is the license applications, which, according to the Applicants, have been altered or submitted by unknown third parties. *Id.* at 3-4. The Applicant suggests through its counsel that a former Deputy Commissioner of the Commission is responsible. *Id.* at 4. This desperate argument is as baseless as it is reckless.<sup>8</sup> Suffice it to say that even if someone had tampered with their license applications, the uncontested evidence that Anthony Piccolo is a principal of these applicants would remain.

Against this clear and convincing evidence then, there is before the Commission only the groundless denial by Toni Piccolo Hyzdu that her father has ever been a principal of Park and Dynamic and her assertion that he was only a principal of B.J. Piccolo which is no longer in business. See Piccolo Hyzdu Tr., at 37-38.<sup>9</sup> For his part, Anthony Piccolo neither confirmed nor denied being a principal of Park and Dynamic, but sought to cast himself as a passive adviser or resource whom his daughter occasionally called upon for counsel and advice. See Anthony Piccolo Dep. at 34, 37-38. We do not think the record supports this assertion. Anthony Piccolo admitted soliciting customers for Park and Dynamic, submitted affidavits in federal district court referring to himself as a principal and making representations on behalf of Park and Dynamic, demonstrated familiarity

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<sup>8</sup> Similarly baseless is the Applicants' claim that they did not receive the personal disclosure forms of Anthony Piccolo that formed part of the applications of Park and Dynamic. Response at n.3. These documents were provided. Even assuming they were not however, the Applicants had ample time to discover this purported omission and to obtain additional copies from the commission staff. They did not do so. The Commission served the recommended decision on the Applicants by hand on December 4, 2001, and the record has been available to them since that time. They chose not to pick the record up until December 12.

<sup>9</sup> We discuss this testimony in more detail *infra*.

with the operations of Park and Dynamic, and though he claims to be retired, still participates in the operations of Park and Dynamic, from dealing with customers to interviewing employees. See Piccolo Tr. at 30-31. The record thus abundantly establishes that Anthony Piccolo participates directly or indirectly in the control of Park and Dynamic and is therefore a principal. See 16 NYC Code. §1-01 (definition "principal").<sup>10</sup>

### III. GROUNDS FOR LICENSE DENIAL

#### A. The Applicants, Through Their Principal, Anthony Piccolo, Improperly Joined With Other Carting Companies to Target A Company Under Federal Trusteeship, Engaging in Both Predatory Pricing and Efforts to Prevent Independent Companies From Entering the New York City Market.

In 1991, these Applicants joined with several other carting companies in Brooklyn and Queens to frustrate federal law enforcement efforts regarding another cartel member. Anthony Piccolo and the Piccolo companies' employee, Andrew DeCarlo, were identified as the primary agents of the cartel's malfeasance. In furtherance of this scheme, the Applicants and others sought to prevent independent national competitors from entering the New York market by attempting to strip a company under federal receivership of its business thereby reducing the likelihood that a national competitor would find the court-supervised company sufficiently attractive to acquire. This scheme foreshadowed later efforts by the cartel to prevent BFI from making a successful entry into the New York market.

"In 1988, much of the private carting business in the New York City boroughs of Brooklyn and Queens was controlled by [Angelo] Paccione and [Anthony] Vulpis... Together [their corporations] generated income of some \$23,000,000 per year." United States v. Paccione, 949 F.2d 1183-84 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992). The defendants were convicted of, among other things, creating an illegal landfill on property owned by two other corporations. Id. at 1184. In lieu of forfeitures, restitution, and fines, the Government accepted the individual defendants' agreement to pay \$22,000,000 – an amount significantly less than the fraud loss. See Paccione, 949 F.2d at 1205. The defendants defaulted on their

<sup>10</sup> As the parent of the majority stockholder Toni Piccolo Hyzdu, Anthony Piccolo would be deemed by Local Law 42 to be a principal of Park and Dynamic even if he did not participate in the control of Park and Dynamic. See 16 NYC Code §1-01.

promise to make this payment within 90 days. Id. In considering that default in sentencing the individual defendants, the Court made the following findings concerning the activities of the cartel:

The private waste carting business is a closed market and potential buyers [of the defendant companies' assets] consist largely of friends and relatives of the defendants. In fact, there was testimony that one attorney provided the legal work for the overwhelming majority of the transactions in the carting industry.... The court finds and concludes that friends and relatives cooperated with defendants in not purchasing lucrative businesses owned by defendants and allowing defendants to remain in possession. Defendants had to have been aware of the fact that there would not be any buyers when they entered into the agreement [to pay the \$22,000,000].

United States v. Paccione, 751 F. Supp. 368, 379-80 (S.D.N.Y. 1990), aff'd, 949 F.2d 1183 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992).

When it became clear that Paccione and Vulpis would not be able to evade their financial obligations through such concerted action, and when the federal government began soliciting bids from national companies, the cartel devised a new approach to the problem: strip the court-supervised companies of their "stops." Piccolo testified that he "wasn't the only one that was out there soliciting" Rosedale customers, "there was other carters out there, maybe a half a dozen as much." See Piccolo Tr. at 88. In fact, Dominick Vulpis of Rosedale Carting, the brother of Anthony Vulpis, lent Piccolo \$5,000.00 to purchase the containers to use for the Rosedale customers. Id. at 137. Furthermore, Piccolo testified that Dominick Vulpis's father, Michael Vulpis, wished him luck in his venture to take Rosedale customers. Id. at 88. In a declaration dated October 31, 1991, Barrington D. Parker, Jr., who was then a federal trustee for the Paccione and Vulpis companies and is now a federal judge, stated that he believed that:

the other Brooklyn area carters are determined that the type of company with who [the government has] been negotiating [i.e., a large, national



company] should not enter the New York market and that these carters are equally determined that the private sanitation market be controlled and dominated by the same group of carters that has historically operated as a cartel, a group described in a prior hearing before the court as "one big happy family."

Id. ¶ 6 at 3. Judge Parker emphatically stated that "[d]espite this Court's warnings to Anthony Piccolo and his employee, Andrew DeCarlo, not to engage in unlawful activity with respect to Rosedale [a Vulpis company under federal supervision], both men continue to make material misrepresentations to Rosedale's customers in an obvious attempt to divert Rosedale's business." Id. ¶ 12 at 6. Because both had been "warned by the Court to cease their interference with Rosedale's customers," the Government sought to hold him in criminal contempt.<sup>11</sup> Id. ¶ 15 at 7-8. In addition to deceptive practices and misrepresentations by the applicants, Judge Parker found that they had "targeted" Rosedale with predatory price discounts. These predatory price discounts were not offered to all of the applicants' customers, but rather were "aimed exclusively at Rosedale." Id. ¶ 27 at 11. Judge Parker concluded that these companies were targeting their price reductions at Rosedale because "the carting industry in Brooklyn desires to eliminate Rosedale as a competitor and, at the very least, to impair Rosedale's operations and profitability so that it would not be an attractive acquisition for a major outside purchaser." Id. ¶ 28 at 12.

At his deposition, Anthony Piccolo offered his opinion of the Rosedale situation:

"It's funny that you mentioned it. You know, I was told that - - for twenty-five years I was told by the department of Consumer Affairs that customers weren't owned by any carter or company. Mr. Parker goes to court and claims that I went after his accounts and I had no right to because they belonged to the government and that always didn't sit well with me because whatever has to be good for you has to be good for me also and

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<sup>11</sup> On their license applications, the applicants denied that they or any principal had been the "subject or target of any investigation involving any alleged violation of criminal law within the last five years" See, e. g., Dynamic and Park Lic. Apps. at 75. The applicants denials, thus, are materially misleading because the applicants were under investigation during that time period.

now he's in the second circuit and I'm sitting here with you."  
See Piccolo Tr. at 81-82.<sup>12</sup>

Based on Judge Parker's affidavit, the Court issued an order, inter alia, directing the Applicants' principal, Anthony Piccolo and employee Andrew DeCarlo, to show cause why they should not be held in contempt, why the Applicants should not be further enjoined from certain proscribed misconduct, and required the Applicants to account for certain property in their possession and to submit to discovery concerning the government's allegations. At his deposition, Piccolo was able to testify about his version of this matter in detail. In contrast, however, Piccolo was unable to remember what he was asked about at a hearing before Judge Motley in the United States District Court:

"You know, I don't remember. You know, I was on the edge of my chair the whole time. It wasn't long. Maybe fifteen minutes. I think they really wanted to know what my association with Rosedale was. I don't know." See Piccolo Tr. at 85.

In December, 1991, the applicants agreed to resolve the claims against it by paying the government \$150,000, and agreeing to not engage in continuing "predatory pricing" by offering Rosedale customers the same rate it offered its own customers.<sup>13</sup>

At his deposition, Anthony Piccolo explained that when the federal government "took over Rosedale Carting," he knew for a fact that Rosedale:

A.: ... had no contracts with their customers. I knew that for a fact and the reason how I knew is they always touted that they didn't need any contracts with their customers...

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<sup>13</sup> The applicants owed Rosedale \$95,000 for tipping at the time of the settlement and claimed that the remaining \$55,000 represented payment for the "purchase" of Rosedale customers at a multiple of 19.5:1. The federal trustee has stated in response to the staff's inquiry that in fact the \$55,000 represented compensation for the unlawful actions taken by the applicants and not a legitimate sale. (No multiple of any kind was calculated as the applicants falsely contend.) The Applicants' actions seriously harmed Rosedale and many of the customers were intimidated and fearful by the time of settlement.

Q.: Why didn't you solicit business from Rosedale customers before the federal government got involved?

A.: I didn't need to. There was no reason. I was doing - - I was okay. I was - - you know, I was self-sustained. You know, I didn't need any additional accounts, but I saw an opportunity, I grasped it. See Piccolo Tr. at 79-80.

However, Anthony Piccolo would not acknowledge that the same opportunity to compete for Rosedale customers always existed:

Q.: Didn't you have the same opportunity before the federal government became involved?

A.: No.

Q.: What was the difference?

A.: Property rights.

Id.

Despite these events, it appears that Piccolo continued brazenly to conspire with Vulpis well after these incidents took place. Evidence presented at the carting trial of Dominick Vulpis brought by the Manhattan District Attorney in the summer of 1997 confirms this. People v Ass'n of Trade Waste Removers of Greater New York, et al., No. 5614/95. The undercover officer in that case testified about a recorded conversation he had on January 20, 1993, with Dominick Vulpis, and others that confirmed that the scheme complained of by Judge Parker continued into 1993, well after the initial matter was settled. Anthony Piccolo continued to conspire with Dominick Vulpis in order to keep former Rosedale assets under the control of the Vulpises and away from the Trustee. In the conversation, Dominick Vulpis states that he was working with another carter whom he identified as Dynamic Carting to get back a Rosedale stop. June 16, 1997 Trial Tr. at 3702.

Q: Did you hear him make reference - did you hear him use these words, "We're looking to get the stop back done through a gentleman that's involved with me and this deal. That's all."

A: Yes.

Q: What was your understanding with respect to what he meant?

A: That he wanted another individual that he was working with him in settling this problem and he later on mentioned a name B.J. Piccolo of Dynamic Carting. For some reason Dominic Vulpis wanted to go through them to pick up the stop because of his – the Government overseeing that business being Rosedale.

Q: Because of the Federal Receivership?

A: Yes.

Trial Tr. at 3702-03.

\* \* \*

Q: When Vulpis said, "Rosedale is a member. Rosedale still is." What was he referring to?

A: That he was a member of the Kings County Trade Waste [Association] therefore he had a right to that stop.

Trial Tr. at 3705.

In their response, the Applicants do not even attempt to contest any of the evidence on this point, claiming it to be inapplicable to Park and Dynamic. Response at 5 n.3. It is anything but inapplicable. Applicants claim that the "Dynamic" referenced in the conversation quoted has nothing to do with the Applicant Dynamic. Response at 5-6. The Applicants claim that Piccolo Hyzdu's cousin Frank Porcaro owned a company called Dynamic, but "walked away from it, allowing Ms. Hyzdu to utilize the name Dynamic for her new company" which she incorporated in 1994. Response at 2 n.1. In fact, however, Dynamic Carting Co. did not just go out of business and make its name available to Piccolo Hyzdu. Some evidence suggests that B.J. Piccolo purchased Dynamic in March 1987 for approximately \$350,960. See Contract of Sale (unsigned), dated March 2,

1987.<sup>14</sup> More likely than not, given the realities of the property rights system, these same customers – or at least the bulk of them - were then spun off under the nominal ownership of Piccolo Hyzdu in 1994 as “Dynamic Rubbish Removal.”

However, the evidence is clear and uncontested that Anthony Piccolo joined with other carters to target a company under federal trusteeship to preserve the mob-run cartel system against “outside” interference.<sup>15</sup> The Commission denies these applications on this additional independent ground.

**B. Anthony Piccolo Was on the Board of the Kings County Trade Waste Association and Has Knowingly Failed to Provide Information and Provided False Information Regarding His Service on the Board**

Anthony Piccolo has apparently served in the past as a member of the Board of Directors of the Kings County Trade Waste Association. In B.J. Piccolo’s application for a waiver of the 30-day contract termination provision of Local Law 42, Anthony Piccolo certified that “I was on the Board of Directors of the Kings County Trade Waste Association approximately 10 years ago.” See B.J. Piccolo Waiver App. at 42. Piccolo distinguished being a member of the Board from playing a “leadership role” in the association, which he denied doing. *Id.* He claimed that he served on the Board only “because I supported its educational and business functions . . . and because I believed I was helping to serve my fellow carters.” *Id.* As he later admitted, however, the only duty of a member of the board of the association was “to pass decisions on property rights,” i.e., to resolve disputes among carters that they couldn’t resolve themselves about which carter owned which customer. Piccolo Tr. at 94-95. Piccolo’s admission that he served on a board whose only function was to adjudicate property rights disputes (according to the rules established to sustain the organized crime cartel) merits denial of these applications, notwithstanding Piccolo’s self-serving and conclusory denials that he did not play a “leadership role.”

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<sup>14</sup> This unsigned document was apparently part of B.J. Piccolo’s DCA file. While recognizing that this proof is far from perfect, it is some evidence that the actual events were other than as described by the Applicants and impeaches Piccolo Hyzdu’s version of what happened. Additionally, it is clear that Anthony Piccolo also represented the interest of Dynamic both before and after his cousin Nick Porcaro left the business.

<sup>15</sup> The Applicants do not contest the evidence that establishes that Anthony Piccolo repeatedly engaged in concerted action against the federal trustee in an attempt to preserve the mob-run cartel system against outside interference. Response at 5 n.3.

At his subsequent deposition, Piccolo changed his story and denied ever having served on the Board. Despite his earlier submission, Piccolo now claimed that although he was asked to serve on the board, he never did so because he was too busy and because, as he put it, "why would I want to get involved in anything like that and kill a day?" Dep. at 94.<sup>16</sup> Confronted with his prior statement to the Commission that he served as a board member, Piccolo simply repeated that he did not play any "leadership role." Dep. at 95. At best his answer was evasive and likely false.

A (Piccolo): I didn't serve in any leadership role. I was asked to be on the board of directors, yes.

Q: That's incorrect [i.e., the waiver application statement]?

A: No. What I'm saying is I didn't serve any leadership role in the association. I wasn't part of the Board of Directors.

Mr. Padian: It says "I was on the Board of Directors."

A: Again, I didn't serve any leadership role.

Q: That statement is wrong?

A: I was approached to be, but I was never part of the board of directors.

Q: That statement is wrong?

A: I would say yes.

Piccolo Tr. at 95-6.

Piccolo cannot have it both ways. He cannot claim to have served on the Board while denying the Board's role in settling property rights disputes, and then later admit its property rights mediation role, but then to deny that he ever served as Board member. Either Piccolo provided false testimony

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<sup>16</sup> Piccolo had apparently forgotten that he supported the Board's "educational and business functions" and wanted to help "serve [his] fellow carters." B.J. Piccolo Waiver App. at 42.

about his service on the Board, or submitted false information as part of B.J. Piccolo's application. In either case, the result of Piccolo's actions was to frustrate the legitimate investigation into the fitness of these Applicants for trade waste removal licenses by providing false information. Given the history of this industry and the role of the Boards of the now defunct Trade Waste Associations, Piccolo's refusal to provide straight answers to simple questions prevented the Commission from obtaining information that bears directly on whether and in what degree a principal of the Applicant knew about and participated in the mediation of property rights disputes pursuant to the rules of the cartel and in what degree these applicants may have directly benefited from such participation. Accordingly, the Commission cannot allow the Applicants to benefit from their principal's attempt to frustrate the Commission's inquiries, and denies these licenses on this independent ground.<sup>17</sup>

**C. The Applicants Have Failed to Provide Truthful Information to the Commission in Connection with Their License Applications**

At her deposition in connection with these applications, the President of Dynamic and Park, Toni Piccolo Hyzdu, testified falsely and misleadingly on a number of material issues. Her testimony was contradicted by other testimony as well as documentary evidence, including the license applications of Park and Dynamic which Piccolo Hyzdu apparently saw for the first time at her deposition.<sup>18</sup> The inescapable conclusion is either that Toni Piccolo Hyzdu is unaware of the most basic aspects of the history, operations, and ownership of the applicants and that someone else is running them, or that she came into her deposition fully prepared to give false testimony because she mistook the Applicants' waiver applications for their license applications while preparing for her deposition. Either alternative does not reflect well on the good character, honesty and integrity of these applicants and the Commission denies these applications on this additional independent ground as well.

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<sup>17</sup> The Applicants do not contest these facts, but argue only that the Anthony Piccolo's wrongdoing cannot fairly be attributed to the Applicants. Response at 5 n.3. Since Piccolo is a principal of the Applicants, the opposite is true.

<sup>18</sup> It appeared that in preparation for her deposition, Piccolo Hyzdu studied the waiver applications of the Piccolo companies rather than their license applications. She thus became committed to the information in the waiver applications which differs markedly (and inexplicably) from that contained in the license applications.

As we have seen, according to the *license* applications of the Piccolo companies, Anthony Piccolo filed principal disclosure forms for all three companies, was listed as a principal of Park and a manager of Dynamic, had authority to make decisions on behalf of Park and Dynamic and acted on behalf of Park and Dynamic before courts and government agencies. See supra at 9-11.<sup>19</sup> By contrast, at her deposition Toni Piccolo Hyzdu testified that Anthony Piccolo was never a principal of Park or Dynamic, or a manager of Park. Piccolo Hyzdu Dep. at 72 and 74. She denied that Park or Dynamic ever had any affiliation with B.J. Piccolo. Id. at 73. In addition, she also claimed that Anthony Piccolo never had authority to make decisions for or sign correspondence or other documents on behalf of Park or Dynamic. Id. at 73-74. All of these statements are false as the Applicants submissions themselves attest.<sup>20</sup>

At her deposition, it was apparent that Toni Piccolo Hyzdu had never before seen the applications whose truth she certified and of whose companies she is the President and 100% owner.

Q: I'm looking at the Dynamic Rubbish Removal application for a license to the Trade Waste Commission. On Schedule A for principals, Anthony Piccolo is listed as a manager.

Toni Piccolo Hyzdu: He is?

Q: Was Anthony Piccolo ever a manager of this company?

A: Who filled this out?

Piccolo Hyzdu Dep. at 71-72. Although she identified her signature on the certification page, she claimed not to know whose handwriting was on certain pages of the application and stated of the Dynamic application: "I have never seen that." Id. at 72.<sup>21</sup> Piccolo Hyzdu then specifically denied answers in the application of Park that she had previously certified.

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<sup>19</sup> Toni Piccolo Hyzdu certified as true the answers provided in the license applications of Park and Dynamic at the time they were filled out. See Park Lic. App. at 126 and Dynamic Lic. App. at 150.

<sup>20</sup> Alternatively, if Piccolo Hyzdu is testifying truthfully, the license applications of Park and Dynamic are false. Either way, the Applicants have failed to provide truthful information to the Commission in connection with their applications. On balance, we think it likely that Piccolo Hyzdu testified falsely.

<sup>21</sup> On May 16, 2001, the Commission received a letter from the applicant's attorney, Gerald Padian, stating that the license applications in his possession were different from the license applications referred to at Piccolo Hyzdu's deposition. Padian stated that "the Commission's copies lists [sic] Anthony Piccolo as a



Q: And now looking at the application as a trade waste business of Park Rubbish Removal, and specifically page 83, page 83, Anthony Piccolo is listed as a principal. Back when this was filled out in 1996, would you say this was incorrect, that he was not a principal at that time, or would he be a principal?

A: No, it's incorrect.

Piccolo Hyzdu Tr. at 74. Piccolo Hyzdu then attempted to rehabilitate her testimony by describing some non-managerial role for her father, but could do no better than that he "helped."

Q: As far as you know, this would be incorrect, that Anthony Piccolo was a manager?

A: He's not a manager. He helps me. He's my father but we wouldn't call him a manager. Since my husband left,<sup>22</sup> my father tried to help me out because he – my father helps me out as much as he can because I have a lot on my shoulders. Since my brother getting incarcerated<sup>23</sup> he helps me out a lot, not by choice.

Piccolo Hyzdu Tr. at 72. In the same vein, Piccolo Hyzdu denied that her father could make any decisions on behalf of Park or Dynamic.

Q: Would your father have authority to make decisions on Park or Dynamic?

A: No, he would advise me. He would give me an opinion if I asked him.

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principal of Dynamic and Park. He is not listed as a principal on the applications that I have enclosed." Enclosed with Padian's letter were copies of the applicants' waiver applications. It seems likely that, in preparation for her deposition, Piccolo Hyzdu reviewed the applicants' waiver applications, rather than the license applications, and attempted to testify in accordance with what she remembered. She was very nervous and visibly upset when confronted at her deposition with information that she previously certified as true which was blatantly inconsistent with her testimony.

<sup>22</sup> Piccolo Hyzdu's husband, Adam Hyzdu, worked for all three Piccolo companies until he was "terminated" from employment on November 1, 1997. See January 1, 1998 letter signed by Anthony Piccolo.

<sup>23</sup> According to Piccolo Hyzdu, her brother Ben Piccolo was incarcerated twelve days after Park began doing business in 1989. Piccolo Hyzdu Tr. at 13.

Piccolo Hyzdu Tr. at 73-74.

Similarly,

Q: Would your father have authority to write letters on behalf of Dynamic and Park Rubbish Removal?

A: No. I sign most of the letters.

Mr. Padian: Would he write them?

A: Joanne would write the letters or he would help me put something together if I felt I was stuck and I needed someone to advise me on what to say.

Q: Would he have authorization to sign his name on any correspondence that pertains to Dynamic or Park?

A: No, he shouldn't.

Id. at 73-74. Piccolo Hyzdu denied that anyone else had signature authority to write checks on behalf of Dynamic or Park: "I'm the only one who writes checks." Id. at 30. This was contradicted not only by the license application, but by Anthony Piccolo as well. Dynamic Lic. App. at 138. See Piccolo Tr., at 29, 30-31 (admits that he signs checks for Park and Dynamic). Moreover, as we have seen, Anthony Piccolo wrote letters to the Commission on behalf of Dynamic and Park and was involved in the litigation against the Commission in early 1997, many months before Adam Hyzdu was terminated. Anthony Piccolo's affidavit showed him to be well aware of and heavily involved in the operations of all three Piccolo companies. The record thus does not support Piccolo Hyzdu's suggestion that Anthony Piccolo stepped in reluctantly to replace first her brother Ben, then her former husband Adam in November 1997.

Asked about her duties as President, Piccolo Hyzdu said (quoting in full): "As president of Park I go in every day, see what is going on, I write checks out. . . . [and] . . . talk to Phil [Fasulo] a lot." Piccolo Hyzdu Tr. at 29. She described Phil Fasulo, the operations manager, as having broad authority to run Dynamic and Park. "He basically handles the men . . . he tells me what is going on, who is doing what and who is not doing what . . .

Phil has full rein as far as the men go. He's allowed to make decisions." *Id* at 29-30. Fasulo had a much more difficult time describing Piccolo Hyzdu's role.

Q: Do you know what kind of duties and responsibilities Toni Lynn has with Dynamic or Park?

A: What kind of responsibilities? I mean, what kind of responsibilities? She is the president of the company. I know she handles – responsibility wise, she is responsible for the whole company.

Fasulo Dep. at 25. Although Piccolo Hyzdu testified that her father was never associated with the applicant companies beyond occasional help, and could not be a principal, Fasulo testified that he was hired in August 2000 (Fasulo Dep. at 9-10) to replace Anthony Piccolo.

Q: When you started working at Dynamic do you know who you replaced?

A: Yeah. I believe I replaced her father. She told me her father was ill.

Fasulo Dep. at 25.

The Applicants conclusory claims that Piccolo Hyzdu testified honestly and truthfully about her father's role in Park and Dynamic is not supported by a single citation to even the barest snippet of testimony. Response at 4 and 6. Such assertions are belied by her actual testimony.

Taken together, the Applicants testimony suggests that someone else is running Park and Dynamic. Common sense and the record indicates that that person is Anthony Piccolo.<sup>24</sup> Whoever is running Park and Dynamic, these applicants have failed to provide truthful information to the Commission in connection with their applications.

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<sup>24</sup> Later in the deposition, Piccolo Hyzdu conceded that Anthony Piccolo worked for the Applicants presently, but without remuneration and only in subordinate capacities. Thus, Anthony "helps" by "bringing the payroll in," "performing collections," and "bringing trucks in for repair." *Id.* at 79. This is as misleading as her testimony that Anthony is not a principal.

It also appears that Anthony Piccolo handled matters involving the Kings County Trade Waste Association ("KCTWA") on behalf of Park and Dynamic during the period of time covered by the Manhattan District Attorney's June 1995 indictment of many leading members of the carting industry, the KCTWA, and other trade waste associations.<sup>25</sup> Behind the thinly-disguised fiction that Anthony Piccolo was merely offering "advice" at the request of his daughter, one can see that it is Anthony who is deciding what shall be done and when. Piccolo Hyzdu defers completely to her father's direction (or "advice"). Piccolo Hyzdu admitted that Park and Dynamic were members of the KCTWA but did not know the dates of their membership or how much money in dues they paid. Piccolo Hyzdu Tr. at 43.

Q: Did you ever attend any meetings of the trade waste association?

A: No.

Q: Did anyone on behalf of Park or Dynamic attend trade waste meetings?

A: No.

Id. at 43-44. This testimony is contradicted by certified answers in the Applicants' waiver applications, which Piccolo Hyzdu proceeded to disavow: "it was basically that was a form letter that . . . my dad and I . . . signed[,] it . . . said I was attending meetings but I never actually did." Id. at 43-44. If this testimony were true, it would mean - besides submitting a false statement in Park's and Dynamic's waiver applications - that Park and Dynamic paid thousands of dollars to belong to an association whose meetings it never attended and whose benefit was unknown to the president of Park and Dynamic.<sup>26</sup>

Q: Why did you pay dues to the association?

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<sup>25</sup> The KCTWA later pled guilty and disbanded.

<sup>26</sup> The record is that Anthony Piccolo attended meetings on behalf of Park and Dynamic as he did for B.J. Piccolo and that Park and Dynamic belonged in order to protect their stops

A.: It was - - you were supposed to do it. It was the thing to do. I asked my father and he advised me that that's what I needed to do.

Q: How did you find out initially, how did you find out about the trade waste association?

A: My father told me about it.

Q: Was this before you started Park or after?

A: After.

Q.: What did your father tell you about it?

A.: Truthfully it was so long ago that I can't even recall the conversation. I knew that his companies were paying dues to the association.

Q.: When your father said you were supposed to join the association because it was the thing to do, what do you mean by that?

A.: Well, he had told me he was a member of this association along with other carters and that's what I should do, too; it was the smart thing to do, too.

Q.: Did you expect benefits from being a member and paying dues to the association?

A.: I don't know.

Q.: Did you resign your membership from the association?

A.: Yes.

Q.: Why did you resign your membership?

A.: Why did we resign? My father had advised me to do that as well.

Q.: When did he tell you to do that?

A.: This was a few years ago.

Q.: And did he tell you why you should resign?

A.: Everyone was getting into trouble.

Q.: When you say "everyone," who do you mean?

A.: The members of the association or the board, the association board.

Q.: Do you know what kind of trouble?

A.: No.

Id. at 44-46.

Here, even if we accept the fiction that Anthony Piccolo is merely offering "advice" at the request of an inquiring daughter, Piccolo Hyzdu shows herself to be completely dependent on her father's judgment on this important issue, and that she herself, at best, has no understanding of the consequences. If we eliminate the fiction, it is Anthony Piccolo who decides that the Applicants will belong to the trade waste association and abide by the rules of the cartel, and when they will resign from the association. She simply follows what her father tells her to do, and her role as the chief executive and president is a fiction.

By any measure, the Applicants, through their president, failed to provide truthful information to the Commission in connection with their respective applications. For this independent reason, the Commission denies these applications.

**D. The Applicants Have Obstructed the Commission's Investigations by Repeatedly and Knowingly Failing to Provide Documents Required by the Commission Pursuant to a Licensing Investigation.**

The Commission has the power “[t]o investigate any matter within the jurisdiction conferred by [Local Law 42] and [has] full power to compel the attendance, examine and take testimony under oath of such persons as it may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other evidence relevant to such investigation.” Admin. Code §16-504(c). The Commission may refuse to grant a license if an applicant “has knowingly failed to provide the information and/or documentation required by the commission. . . .” Admin. Code. §16-509(b). The applicants’ failure to provide complete documents requested by the Commission constitutes another independent basis on which the Commission denies the application.

On numerous occasions, the applicants have ignored or delayed the Commission’s requests for information. On February 6, 1997, the Commission sent a letter to Park to inform Park that the Commission was aware that Park was charging rental fees to its customers in violation of 17 RCNY § 5-02(e).<sup>27</sup> The letter directed Park to cease from charging rental fees. On February 13, 1997, Albert Kostrinsky, Park’s attorney responded to the Commission by letter stating that “Park Rubbish does not own, nor does it lease, nor does it charge customers for containers, nor does it provide containers to its customers.”

Toni Piccolo Hyzdu is the President of Sitka Leasing (“Sitka”). The Commission learned that Sitka was the Piccolo controlled entity that charged fees to Park’s customers for container leasing. On March 20, 1997, the Commission served a subpoena duces tecum and accompanying letter to Ms. Piccolo, with copies to her attorney, Mr. Kostrinsky, directing her to provide business records from both Park and Sitka by April 1, 1997. At his deposition, Anthony Piccolo acknowledged that he “believes that he received the subpoena.” See Piccolo Tr. at 98. Thereafter, Mr. Kostrinsky contacted the Commission and requested an extension to April 15, 1997 to fully comply with the subpoena. The Commission agreed to the requested

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<sup>27</sup> Fees can only be charged for a mechanically operational compactor, not a container.

extension of time to comply. However, despite the Kostrinsky's assurances, Park failed to comply by

April 15, 1997. On April 16, 1997, the Commission sent a letter to Mr. Kostrinsky, notifying him about the applicant's failure to comply with the subpoena. Mr. Kostrinsky did not respond. On April 23, 1997, the Commission sent a letter to Toni Piccolo Hyzdu, which advised her that the failure to provide the records would place the Applicant in violation of the Commission's rules. She was also informed that her failure to cooperate would be taken into consideration by the Commission when making its determination on Park's license application. To date, Toni Piccolo has never responded, and the Commission has been unable to bring the issue to closure.

In response, the Applicants claim to have delivered "eleven boxes" of documents pursuant to the Commission's subpoena. This is erroneous. Sitka produced nothing in response to the Commission's subpoena. It is possible that the Applicants are confusing this matter with another Commission investigation. B.J. Piccolo produced 8 boxes of documents to the Commission in connection with a Commission investigation of allegations that carters servicing customers that had formerly belonged to Rosedale Carting were paying a portion of the revenues generated from the stops to Dominic Vulpis.

However, this was not the only instance when the Applicants flouted both the Commission's rules and the written directives of the Commission. By two letters dated April 19, 2001, the Commission's staff requested that the Applicants provide certain business records by April 27, 2001. In response, the Applicant's attorney requested an extension of time to comply with the Commission's request. The Commission's staff agreed to extend the time to comply to May 3, 2001. On May 3, 2001, the Applicants provided some of the records to the Commission. However, complete records were still not supplied.

By letter dated May 8, 2001, the Commission's staff informed the Applicants that they had not completely complied with a previous request for documents. The missing documents were, *inter alia*, customer subsidiary ledgers, loans and notes payable and receivable ledgers, and all bank records for the period of January 1, 1999 to March 31, 2001 including all cancelled checks, and copies of the corporate tax returns for 1999 and 2000.



By letter dated June 4, 2001, the Commission's staff again advised the Applicants that incomplete records had been supplied to the Commission. The missing documents included *inter alia*, bank statements, deposit slips, cancelled checks and wire transfer documents, and signed loan/note contracts, agreements and accompanying amortization schedules. At this time, the Commission's staff also requested that the Applicants provide waste stream surveys from 1999 and 2000 and collection tickets for the period of January 1, 1999 to March 31, 2001. A further deadline for the above records was set for June 11, 2001.

The Commission's staff was not contacted by the applicants or the Applicants representatives on or before June 11, 2001. Thus, the applicants were in default of their obligation to supply complete sets of the requested records. The Applicants were reminded of this fact by letter dated June 13, 2001. Subsequently, on June 15, 2001, the Applicants submitted another partial response to the Commission's requests. Despite numerous requests and accommodations, the Applicants have yet to provide complete sets of the requested documents.

Lastly, the Applicant's demonstrated their non-cooperation by failing to comply with the Commission's directive, pursuant to §509(b) of Local Law 42 of 1996 for audited financial statements.<sup>28</sup> This request was made by letter dated July 6, 2001. In response, the Applicants' accountant sent the Commission a letter along with statements that were not audited.

In their response, the Applicants do not deny that they failed to provide records that were requested by the staff. All of the records requested by the staff are required to be maintained by the Applicant by law. Despite the numerous requests by the staff, and several generous extensions for the Applicant to comply, the Applicant provided only incomplete copies of the bank statements and the cancelled checks requested. Furthermore, the applicant did not provide any wire transfer documents or any collection tickets as requested by the staff. Surely, the Applicant did not have to make any copies of these documents, as the Applicant could have easily supplied original copies. Moreover, the staff's letters to the Applicant make clear that "...cancelled checks (front and back)" were requested. With each incomplete response to the staff's requests, the Applicant was advised of its

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<sup>28</sup> By local law, licensees are required to maintain audited financial statements. 16 NYC Code §520(c).

noncompliance. This culminated with the staff's final letter dated June 13, 2001 wherein the Applicant was once again advised about the specific outstanding documents and the possible consequences of continued noncompliance.

Thus, the applicants have repeatedly and knowingly failed to provide information and documentation required by the Commission in violation of 16 NYC Code §509(b). The Commission denies these applicants on this adequate and independent ground as well.

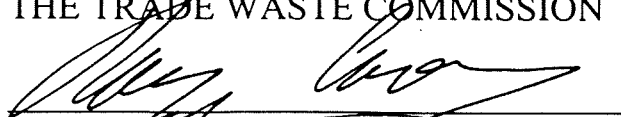
#### **IV. CONCLUSION**

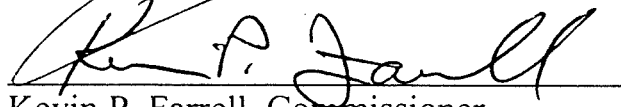
The Commission is vested with broad discretion to refuse to issue a license to any applicant that it determines lacks good character, honesty and integrity. Based upon the foregoing independent grounds, including Anthony Piccolo's knowing association with an organized crime associate and convicted racketeer, the Piccolo companies illegal raiding of the federal trustee's stops, and the perjures testimony of Toni Piccolo Hyzdu, all of which the Commission is expressly authorized to consider under Local Law 42, the Commission denies the license applications of Park Rubbish and Dynamic.

The license denial decisions of Park Rubbish and Dynamic are effective three (3) weeks from the date hereof, to accommodate the Applicants' request that they be allowed time to sell their hard assets. In order that the Applicants' customers may make other carting arrangements without an interruption in service, the Applicants are directed (i) to continue servicing their customers for the next three weeks in accordance with their existing contractual arrangements, unless advised to the contrary by those customers, and (ii) to send a copy of the attached notice to each of their customers by first-class U.S. mail by no later than January 2, 2002. The Applicants shall not service any customers, or otherwise operate as a trade waste removal business in the City of New York, after the expiration of the three-week period.


Dated: December 27, 2001

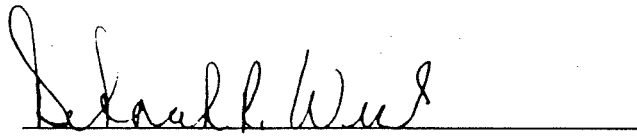
THE TRADE WASTE COMMISSION

  
Raymond V. Casey  
Chairman

  
Kevin P. Farrell, Commissioner  
Department of Sanitation

Jane Hoffman, Commissioner  
Department of Consumer Affairs

  
Edward J. Kuriansky, Commissioner  
Department of Investigation

  
Deborah R. Weeks, Commissioner  
Department of Business Services