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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 DENYING
THE APPLICATION OF PEARSALL CARTING CO., INC. FOR A
LICENSE TO OPERATE AS A TRADE WASTE BUSINESS**

By application submitted on August 28, 1996, Pearsall Carting Co., Inc. ("Pearsall" or the "Applicant") applied to the New York City Trade Waste Commission for a license to operate as a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), § 16-508. 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 and certain criminal activities. Based upon the record as to the Applicant, the Commission finds for the following independently sufficient reasons that the Applicant lacks good character, honesty, and integrity, and denies its license application:

- (1) the Applicant, through an undisclosed principal and an undisclosed employee, committed and has been indicted for a recent series of criminal acts relating directly to its fitness for licensure in the commercial carting industry, to wit: the theft on numerous occasions of valuable waste containers belonging to other carting companies; and
- (2) the Applicant failed to provide truthful information in connection with its license application and in connection with a Commission 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. For the past forty years, and until only recently, the private carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit recently 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 testimonial and documentary evidence adduced during lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anti-competitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council 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 . . . 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 have been 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 in illegal ways” by “enforc[ing] the cartel’s anticompetitive dominance of the waste collection industry.” SRI, 107 F.3d at 999.

[T]angential legitimate purposes pursued by a trade association whose *defining aim, obvious to all involved, is to further an illegal anticompetitive scheme* will not shield the association from government action taken to root out the illegal activity.

Id. (emphasis added).

The Second Circuit has roundly dismissed carting companies’ rote denials of knowledge of the role their trade associations played in enforcing the cartel’s criminal “property rights” system:

The [New York State Legislature’s] 1986 Assembly report stated that no carting firm in New York City “can

operate without the approval of organized crime." Hence, even th[o]se carters not accused of wrongdoing are aware of the "evergreen" contracts and the other associational rules regarding property rights in their customers' locations. *The association members—comprising the vast majority of carters—recognize the trade associations as the fora to resolve disputes regarding customers. It is that complicity which evinces a carter's intent to further the trade association's illegal purposes.*

SRI, 107 F.3d at 999 (emphasis added).

In June 1995, all four trade associations, together with seventeen individuals and twenty-three carting companies, were indicted 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.

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 corporations 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 recent 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 a competitor from bidding on a "Vibro-owned" building, 200 Madison Avenue in Manhattan.

On January 27, 1997, Angelo Ponte, a lead defendant in the state prosecution and the owner of what was once one of New York 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 New York City carting industry.

On January 28, 1997, Vincent Vigliotti became the fourth individual defendant to plead guilty to carting industry corruption charges. 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 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 New York City 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 New York City carting industry. The same day, Manhattan carters Henry Tamily and Joseph Virzi pleaded guilty to attempted enterprise corruption and agreed to similar sentences, fines, and prohibitions. All six defendants confirmed the existence of the criminal cartel and admitted to specific instances of their participation in it.

On February 24, 1997, defendants Michael D'Ambrosio, Robros Recycling Corp., and Vaparo, Inc. all pleaded guilty in allocutions before New York Supreme Court Justice Leslie Crocker Snyder. D'Ambrosio pleaded guilty to attempted enterprise corruption, and his companies pleaded to criminal antitrust violations.

On July 21, 1997, Philip Barretti, Sr., another lead defendant in the state prosecution and the former owner of New York 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 New York City carting industry. On the same day, Philip Barretti, Jr. and Mark Barretti pleaded guilty to a Class E 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 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 New York City carting industry. On the same day, the QCTW pleaded guilty to a criminal antitrust violation and agreed to forfeit all of its assets.

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. The jury verdict confirms 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 and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code §16-503. The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997).

Local Law 42 provides that "it 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 Commission." 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, trade waste removal licenses previously issued by the DCA remained valid pending decision by the Commission on timely filed license applications.

See Local Law 42, §14(iii)(1). The Applicant holds a DCA license and timely filed an application for a license from the Commission.

As the United States Court of Appeals has definitively ruled, an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997). 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;

* * *

- (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.

Admin. Code §16-509 (a).

II. DISCUSSION

On September 15, 1998, the Commission's staff issued a 17-page recommendation that Pearsall's license application be denied. Pursuant to the Commission's rules, Pearsall had ten business days, or until September 28, 1998, to submit a written response to the staff recommendation. See 17 RCNY § 2-08(a). On September 28, Pearsall submitted a two-page affidavit from Frank Palompelli, a two-page affirmation from Murray Richman, Esq., and a cover letter from Mr. Richman.¹ The Commission has considered both the staff's recommendation and Pearsall's submissions in rendering its determination.

Pearsall contends that it is entitled to an evidentiary hearing, and that to deny it a license without such a hearing would deprive it of due process. See Affidavit of Frank Palompelli, sworn to September 28, 1998 ("Palompelli Aff."), at 1; Affirmation of Murray Richman, dated September 28, 1998 ("Richman Aff."), at 2. This argument is baseless. Local Law 42 provides that the Commission may refuse to issue a license to an applicant after "notice and an opportunity to be heard," but confers no right to an evidentiary hearing. Admin. Code §16-509(a). Further, as the United States Court of Appeals has definitively ruled, an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S. 2d 189 (1997). Absent any cognizable property right, the applicant has no due process right to a hearing. Daxor, 90 N.Y.2d at 99. Pearsall has been afforded notice and, through its response to the staff's recommendation, an opportunity to be heard. Nor does there appear to be any reason to provide Pearsall with an evidentiary hearing; as shown below,

¹ It appears from these submissions that Mr. Richman is Frank Palompelli's personal attorney. It is unclear whether Mr. Richman also represents Pearsall in this matter.

Pearsall does not dispute the facts that form the basis for the staff's recommendation.²

A. The Facts Demonstrating Pearsall's Criminal Activity

Pearsall's application identified the location of its principal office and garage as 432 Bryant Avenue in the Bronx. Lic. App. at 1. The principals of the Applicant were identified as Frank Palompelli (president and 50% stockholder) and his wife, Roxanne Palompelli (vice-president, secretary, and 50% stockholder). Id. at 22.³ The license application identified two employees: Aldo Leonforti (driver) and Thomas Palompelli (driver's helper), Frank Palompelli's brother. Id. at 29.

Over the past year, the Commission has received a number of complaints concerning thefts of trade waste containers from several carting companies servicing Bronx customers. The companies identified Pearsall as the likely perpetrator. These complaints are summarized below:

<u>Date of Complaint</u>	<u>Complainant</u>
September 20, 1997	Refuse and Environmental Waste Management Inc.
November 10, 1997	Multi Carting Inc.
January 13, 1998	Refuse and Environmental Waste Management Inc.
July 8, 1998	USA Waste Services of NYC, Inc.
August 4, 1998	Paper Service Inc.
August 5, 1998	Alpha Carting Inc.

² Pearsall also suggests that it did not have sufficient time to submit a response to the staff's recommendation. See Palompelli Aff. at 2. However, Pearsall made no request for additional time to submit a response, and in the response it did submit does not identify what, if any, information it would have submitted had it been afforded additional time.

³ Pearsall's response to the staff recommendation identified Frank Palompelli as the Applicant's "sole proprietor and stockholder." See Palompelli Aff. at 1. If that is true, Pearsall neglected to inform the Commission of this change in ownership, as required by the Commission's rules. See 17 RCNY § 2-05(a)(ii); id. § 1-01; Application for License as a Trade Waste Business, Part I, Question 7(a).

In some of these cases, the complaining carting company had recently competed successfully against Pearsall for the right to service the customer from whose premises the container was stolen. In other cases, the complainant had recently begun servicing a former Pearsall customer, and a container was stolen from elsewhere on the complainant's route.

During their investigation of the complaint by Alpha Carting Inc., at about 9:30 p.m. on August 5, 1998, New York Police Department personnel assigned to the Commission observed two individuals, later identified as Thomas Palompelli and Nicholas Scalera, drive up to Pearsall's business premises at 432 Bryant Avenue in the Bronx. Palompelli unlocked the gate, and Scalera opened the garage. At that point, NYPD Detective Eaton Davis walked past the open garage and observed in plain view near the front of the garage two containers bearing the name "Alpha Carting." Detective Davis further observed in Pearsall's garage a number of other containers bearing the names of other carting companies, including Multi Carting, Paper Service, and USA Waste Services. Moments later, Scalera left the garage driving a Pearsall truck, and Palompelli closed and locked the gate and drove away in the car.

The Pearsall truck returned to the vicinity of the garage at about 11:55 p.m. that night. At that point, Sergeant Michael Gerard and Detective Davis observed Scalera remove a container bearing the name "CT Carting" from its location in front of International Floral Distributors, Inc. at 1301 Oakpoint Avenue, attach the container to the truck, and drive to the nearby Pearsall garage at 432 Bryant Avenue. When questioned at the scene by Detective Davis, Scalera stated that his "boss," Thomas Palompelli, had directed him to take the CT Carting container and put it in Pearsall's garage. Scalera was then arrested and charged with criminal possession of stolen property in the third degree and petit larceny. Scalera's pager, which was confiscated after his arrest, was replete with messages from Palompelli indicating that he had been trying to contact Scalera throughout the night.

At about 8:30 a.m. the next day, August 6, Thomas Palompelli arrived at the 432 Bryant Avenue location. When questioned by Sergeant William Phillips and Detective Edmund Warren, Palompelli stated that he was an owner of Pearsall and owned the garage with his brother Frank. Palompelli at first claimed that he had not been to Pearsall's business premises or seen Scalera for about six months. He admitted the truth only when told that the

police had seen him there the night before. Palompelli was then arrested and charged with criminal possession of stolen property in the third degree and petit larceny.

At about 9:00 a.m. in front of Pearsall's business premises, one Joseph Perez identified himself to Lieutenant Alfred Baldino as the attorney for Pearsall. Perez stated that Pearsall was owned by Frank Palompelli and that Pearsall's operations in New York City were run by Thomas Palompelli and an office manager, Mimi Hughes.

Later that day, a representative of C.T. Carting Corp. arrived at Pearsall's garage, identified the container that had been stolen the night before, and provided a copy of a contract indicating that C.T. Carting had recently begun servicing the location from which the container was stolen. Similarly, representatives of Alpha Carting, Multi Carting, Paper Service, and USA Waste Services identified their containers in Pearsall's garage as stolen. All five companies agreed to press charges against Pearsall. In all, nineteen containers belonging to six different carting companies were recovered from Pearsall's garage. Their combined value is about \$7,000.⁴

The Bronx District Attorney subsequently obtained a search warrant for the 432 Bryant Avenue location. A police search of the premises revealed paintbrushes and green paint for use in making the stolen containers look as if they belonged to Pearsall, which uses green containers.⁵ In addition, numerous records were seized, certain of which corroborated Thomas Palompelli's managerial role in Pearsall.

On August 11, 1998, Nicholas Scalera was indicted by a Bronx County grand jury for criminal possession of stolen property in the third degree, a Class D felony, and for petit larceny, a Class A misdemeanor. See N.Y. Penal Law §165.50; *id.* § 155.25. On September 3, 1998, both Thomas Palompelli and Pearsall were indicted by a Bronx County grand jury on the same charges.

⁴ Pearsall's response speculates that these containers may have been "abandoned" by their owners. See Palompelli Aff. at 1. Given the owners' prior complaints of container thefts by Pearsall, this hypothesis is frivolous.

⁵ In investigating Multi Carting's complaint concerning stolen containers, on May 1, 1998, Detective Davis had examined a container at a laundromat located at 1442 Gun Hill Road in the Bronx and serviced by Pearsall. The container was painted green, with the name "Pearsall" in white stenciled lettering. When the layer of green paint was scraped away, there was revealed a coat of gray paint with the name "Multi Carting" in blue stenciled lettering.

B. Thomas Palompelli Is an Undisclosed Principal of Pearsall

Although Pearsall identified only two principals, Frank Palompelli and Roxanne Palompelli, on its license application, the evidence establishes that Thomas Palompelli also is a principal of the Applicant as that term is defined in Local Law 42. The law defines "principal" to include any person "participating directly or indirectly in the control" of the business entity. Admin. Code §16-501(d). Thomas Palompelli's role in Pearsall's business plainly fits that description.

First, Thomas Palompelli described himself to the police as an "owner" of the Applicant business and of the garage at 432 Bryant Avenue used by Pearsall. Second, Nicholas Scalera, who drove a truck for Pearsall, referred to Thomas Palompelli as his "boss." Third, Pearsall's attorney stated to the police that Thomas Palompelli runs Pearsall's business operations in New York City. Fourth, business records maintained by Pearsall confirmed Thomas Pearsall's managerial role in the company. Fifth, it is a fair inference that Thomas Palompelli, having personally directed Scalera to steal the C.T. Carting container, also was personally involved in the theft of the other stolen containers found in Pearsall's garage. Indeed, in indicting both Palompelli and Pearsall for criminal possession of stolen property valued in excess of \$3,000, see N.Y. Penal Law §160.65, the grand jury found probable cause to believe that he was involved in multiple container thefts for Pearsall. The totality of this evidence amply supports the conclusion that Thomas Palompelli participated directly or indirectly in the control of Pearsall and thus is a principal of the Applicant.

C. Grounds for Denial of Pearsall's License Application

1. Criminal Activity

During the heyday of the organized crime-controlled cartel in the New York City commercial carting industry, the theft or destruction of containers was a means of enforcing the cartel's property-rights system. See The Waste Industry: Italy-America – Achieving a Crime-Free Market (proceedings of conference sponsored by New York University School of Law and Istituto di Studi Politici Economici e Sociali), June 5-6, 1997, at 317 (remarks of Marybeth Richroath). Carting companies attempting to compete for customers were punished, and thereby deterred from further

efforts at competition, by having their containers stolen or demolished by the carter to whom the customer "belonged." The unmistakable message of such criminal acts was that competition would not be tolerated and would in fact be punished.

Pearsall, which has been in business in New York City since at least 1975 (Lic. App. at 2), resorted to this same cartel-era tactic in stealing the containers of its rivals.⁶ Carting companies successfully competing against Pearsall for customers were punished by Pearsall through the theft of the carters' containers from the business premises of either the "lost" customers or other customers on the successful carters' routes. Pearsall then cynically appropriated the stolen containers to its own use by painting them over. Pearsall's anticompetitive criminal behavior, a hallmark cartel tactic, cannot be tolerated under a regulatory framework committed to the restoration of competition in the carting industry. Indeed, on May 19 and September 3, 1997, at mandatory informational meetings for the carting industry, Commission representatives advised the industry that theft of containers would not be tolerated by the Commission and would constitute grounds for license denial. Pearsall apparently ignored that warning.

In its response to the staff recommendation, Pearsall does not deny any of the facts supporting the conclusion that it engaged in a pattern of thefts of containers from a number of its competitors. Nor does Pearsall dispute that Thomas Palompelli is a principal of the Applicant and is in charge of Pearsall's operations in New York City. Pearsall merely asserts that Frank Palompelli did not personally "authorize" anyone under his "auspices" to steal the containers that were found on Pearsall's business premises. See Palompelli Aff. at 1. Palompelli does not aver that he was unaware that there were stolen containers on the premises. But whatever Frank Palompelli's statement may mean, it is irrelevant here. The fact remains that an undisputed principal of Pearsall, Thomas Palompelli, engaged in a pattern of container thefts. Under Local Law 42, Pearsall is accountable for his actions. See Admin. Code § 16-501(a).

In making licensing determinations, the Commission is expressly authorized to consider pending indictments or convictions of the applicant (or any of its principals) for crimes which, in light of the factors set forth in

⁶ Pearsall notes that it was not a member of any of the now-convicted trade associations used to enforce the cartel's rules. See Richman Aff. at 1. This is irrelevant. As the facts demonstrate, Pearsall engaged in unlawful activity typical of the cartel era in order to discourage competition for its customers.

section 753 of the Correction Law, would provide a basis under that statute for refusing to issue a license. See Admin. Code § 16-509(a)(ii)-(iii); see also id. §16-501(a). Those factors are:

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

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

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

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

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

(f) The seriousness of the offense or offenses.

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

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

N.Y. Correct. Law §753(1).

Applying these factors, the Commission finds that, notwithstanding the public policy of the state of New York to encourage licensure of persons convicted of crimes, the crimes committed by Pearsall (through its principal, Thomas Palompelli, and its agent, Nicholas Scalera) are so recent, so serious, and so closely related to both the purposes for which the Applicant seeks a license, and the duties and responsibilities associated with such licensure, as to compel the conclusion that Pearsall lacks good character, honesty, and integrity. Accordingly, in the exercise of its discretion, and in

the legitimate interest of protecting the property, safety, and welfare of the general public, the Commission denies this license application.

Indeed, Pearsall's crimes are serious enough to constitute "racketeering activity" within the meaning of Local Law 42. Criminal possession of stolen property in the third degree is a predicate felony for enterprise corruption prosecutions under the Organized Crime Control Act. See N.Y. Penal Law § 460.10(1)(a) (listing, *inter alia*, Penal Law §165.50). As such, the crime constitutes "racketeering activity under Local Law 42. See Admin. Code §16-509(a)(v) (referring, *inter alia*, to predicate felonies listed in Penal Law § 460.10(1)). Pearsall's license application is denied on this ground as well.

2. Failure to Provide Truthful Information

A license applicant's failure to provide truthful information to the Commission in connection with the application is an independent ground for denial of the application. Admin. Code §§ 16-509(a)(i); 16-509(b). As shown above, Thomas Palompelli is a principal of Pearsall. Pearsall, however, stated to the Commission that it had only two principals, Frank Palompelli and Roxanne Palompelli; the Applicant did not identify Thomas Palompelli as a principal. Lic. App. at 3, 22-23. The identity of a carting company's principals obviously is of material significance to the Commission, and Pearsall's misrepresentations on the subject warrant denial of its license application – particularly since its undisclosed principal committed crimes at its behest and for its benefit.

In addition, Pearsall, through Thomas Palompelli, provided false information to the Commission in connection with its investigation into thefts of containers. As recounted above, Palompelli lied to the police in stating on the morning of August 6 that he had not been to Pearsall's business premises or seen Nicholas Scalera for about six months – when in fact he had been observed there with Scalera the night before, when he told Scalera to steal a container for Pearsall. These blatant lies plainly cast a pall on Palompelli's – and, therefore, Pearsall's – character, honesty, and integrity and thus provide another independent basis for denial of this license application.

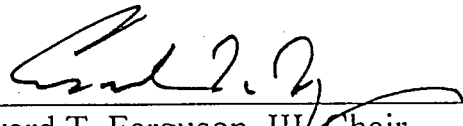
III. CONCLUSION

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 recent indictment of Pearsall, one of its principals, and one of its employees for crimes aimed at stifling competition in the carting industry, as well as Pearsall's misrepresentations in its license application and its undisclosed principal's lies to the Commission, all of which the Commission is authorized to consider under Local Law 42, the Commission denies this license application.

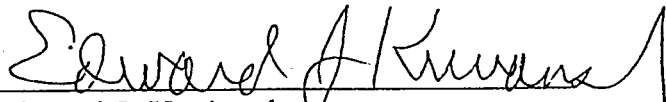
This license denial decision is effective fourteen days from the date hereof. In order that Pearsall's customers may make other carting arrangements without an interruption in service, Pearsall is directed (i) to continue servicing its customers for the next fourteen days in accordance with its existing contractual arrangements, and (ii) to send a copy of the attached notice to each of its customers by first-class U.S. mail by no later than October 5, 1998. Pearsall shall not service any customers, or otherwise operate as a trade waste removal business in New York City, after the expiration of the fourteen-day period.

Dated: October 2, 1998

THE TRADE WASTE COMMISSION

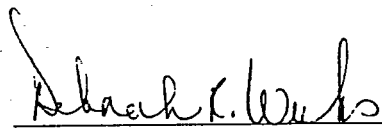


Edward T. Ferguson, III, Chair

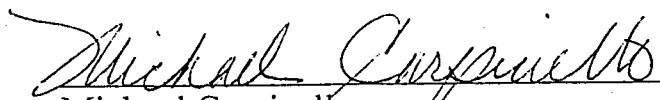


Edward J. Kuriansky
Investigation Commissioner

Jules Polonetsky
Consumer Affairs Commissioner



Deborah R. Weeks
Acting Business Services Commissioner



Michael Carpinello
Acting Sanitation Commissioner



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

October 2, 1998

**NOTICE TO CUSTOMERS OF PEARSALL CARTING CO.
REGARDING TERMINATION OF CARTING SERVICE**

Dear Carting Customer:

The New York City Trade Waste Commission, which regulates private carting companies in the City, has denied the application of Pearsall Carting Co. ("Pearsall") for a license to collect trade waste. As of **October 17, 1998**, Pearsall will no longer be legally permitted to collect waste from businesses in New York City. If Pearsall is collecting your waste, you will have to select another carting company to provide you with that service by **October 17, 1998**.

The Commission has directed Pearsall to continue providing service to its customers through October 16, 1998. **If your service is interrupted before October 17, call the Commission at 212-676-6275.**

There are approximately 250 carting companies that are legally permitted to collect waste from businesses in New York City. There are several ways that you can find out which ones are willing to service customers in your neighborhood:

- **Find out which company is servicing your neighbor.** A carting company cannot, without a business justification satisfactory to the Commission, refuse to service you if it already has another customer that is located within 10 blocks of your business. You can find out which carting companies service your area by looking at the **carting stickers** that many businesses display on their store-fronts.
- **Consult public directories, such as the Yellow Pages.**
- **Call the Commission at 212-676-6275.**

To assist you further, we have given all 200 plus carting companies in New York City a list of all of Pearsall's customers, including yourself.

The carting industry is changing for the better and **prices have been falling over the past two years**. Customers that shop around have been able to cut their carting bills by a third, and often by a half or more. You should use this opportunity to get the best rates and service by soliciting bids from at least four carting companies before signing a carting contract.

You have many rights under Local Law 42 of 1996, which Mayor Rudolph W. Giuliani signed in 1996 to address the corruption and anticompetitive practices that have long plagued the commercial waste industry in New York City, including:

- The right to be offered a contract by your carting company. A **form carting contract** that has been approved by the Commission may be obtained from the Commission by calling (212) 676-6208.
- The right to be charged a reasonable rate for waste removal services. The City sets the maximum rates that carting companies can charge. The City last year reduced the maximum rates for the removal of trade waste to **\$12.20 per loose cubic yard** and \$30.19 per pre-compacted cubic yard. Most businesses dispose of loose waste; only businesses that have trash-compactors dispose of pre-compacted waste. Under the new rule, businesses that dispose of loose trash in bags filled to 80% of capacity (as many businesses do) may not be legally charged more than:
 - \$2.66 for each 55 gallon bag of trash
 - \$2.42 for each 50 gallon bag of trash
 - \$2.17 for each 45 gallon bag of trash
 - \$1.93 for each 40 gallon bag of trash
 - \$1.59 for each 33 gallon bag of trash
 - \$1.45 for each 30 gallon bag of trash
- These rates are only **maximum** rates. Customers are encouraged to "shop around" and get bids from four or more carting companies to find a good price. Businesses should be able to get rates below \$10.00 per loose cubic yard and \$25.00 per pre-compacted cubic yard. You may also want to insist upon the right to terminate your contract with the carter on thirty days' notice. (There is no requirement that you give the same right to the carting company.)

If you have any questions or complaints about commercial waste hauling in New York City, call the Commission at 212-676-6275.

Edward T. Ferguson, III
Chair and Executive Director