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

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE APPLICATION OF AMANDA CARTING CORP. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

Amanda Carting Corp. ("Amanda" or the "Applicant") has applied to the New York City Business Integrity Commission, formerly the Trade Waste Commission (the "Commission"), for an exemption from licensing requirements and for issuance of a registration to operate a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a). Local Law 42, which created the Commission to regulate the commercial carting industry in New York City, was enacted to address pervasive organized crime and other corruption in the industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

Amanda applied to the Commission for an exemption from licensing requirements and for issuance of a registration to operate a trade waste business "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation" – a type of waste commonly known as construction and demolition debris, or "C & D" Admin. Code §16-505(a). Local Law 42 authorizes the Commission to review and determine such exemption applications. See id. If, upon review and investigation of an exemption application, the Commission grants the applicant an exemption from licensing requirements applicable to businesses that remove other types of waste, the applicant will be issued a registration. See id.

In determining whether to grant an exemption from licensing requirements and a registration to operate a construction and demolition debris removal business, the Commission considers the same types of factors that are pertinent to the Commission's determination whether to issue a license to a business seeking to remove other types of waste. See, e.g., Admin Code §16-504(a) (empowering Commission to issue and establish standards for issuance, suspension and revocation of licenses and registrations); compare Title 17, Rules of the City of New York ("RCNY") §§1-06 & 2-02 (specifying information required to be submitted by license applicant) with id. §§1-06 & 2-03(b) (specifying information required to be submitted by registration

applicant); See also Admin. Code § 16-509(a)(ci). Central to the Commission's investigation and determination of an exemption application is whether the applicant has business integrity. See 17 RCNY § 1-09 (prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); Admin. Code §16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity"). Local Law 42 makes clear that the Commission is not limited to consideration of the enumerated factors; the list is meant to be illustrative and not exhaustive. Id.; accord Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008) (Commission denial not arbitrary and capricious where based on a criminal conviction, identification as an organized crime associate and false and misleading.

Based upon the record as to the Applicant, the Commission denies its application on the ground that this Applicant lacks good character, honesty, and integrity for the following reason:

1. The Applicant knowingly failed to provide information and provided false and misleading information to the Commission.

   A. Donald Von Weken and Mary Ann Von Weken refused to provide sworn testimony and documentation required by the Commission.

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 four decades, and until only a few years ago, 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 has described that cartel as "a 'black hole' in New York City's economic life." Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 989 (2d Cir. 1997) ("SRI").

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 made numerous factual findings concerning organized crime's longstanding and corrupting influence over the City's carting industry and its effects, including the anticompetitive cartel, exorbitant carting

rates, and rampant customer overcharging. More generally, the Council found "that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct." Local Law 42, § 1.

The City Council's findings of extensive corruption in the commercial carting industry have been validated by the successful prosecution of many of the leading figures and companies in the industry. In 1995 and 1996, the Manhattan District Attorney obtained racketeering indictments against more than sixty individuals and firms connected to the City's waste removal industry, including powerful mob figures such as Genovese organized crime family capo Alphonse Malangone and Gambino soldier Joseph Francolino. Simply put, the industry's entire modus operandi, the cartel, was indicted as a criminal enterprise. Since then, all of the defendants have either pleaded or been found guilty of felonies; many have been sentenced to lengthy prison terms, and many millions of dollars in fines and forfeitures have been imposed.

The Commission's regulatory and law-enforcement investigations have confirmed that organized crime has long infiltrated the construction and demolition debris removal sector of the carting industry as well as the garbage hauling sector that was the focus of the Manhattan District Attorney's prosecution. In light of the close nexus between the c & d sector of the carting industry and the construction industry, mob influence in the former should come as no surprise. The construction industry in New York City has been corrupted by organized crime for decades. See, e.g., James B. Jacobs, Gotham Unbound: How New York City Was Liberated from the Grip of Organized Crime 96-115 (1999) (detailing La Cosa Nostra's influence and criminal activity in the concrete, masonry, drywall, carpentry, painting, trucking, and other sectors of the City's construction industry).

Moreover, the C & D sector of the carting industry has been a subject of significant federal prosecutions over the past decade. In 1990, Anthony Vulpis, an associate of both the Gambino and the Genovese organized crime families, Angelo Paccione, and six waste hauling companies owned or controlled by them were convicted of multiple counts of racketeering and mail fraud in connection with their operation of a massive illegal landfill on Staten Island. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992). Many C & D haulers dumped their loads at this illegal landfill, which accumulated 550,000 cubic yards of refuse over a mere four-month period in 1988; during that period, "the City experienced a sharp decline in the tonnage of construction waste deposited" at its Fresh Kills landfill, as well as "a concomitant decline in revenue" from the fees that would have been charged for dumping at a legal landfill. 949 F.2d at 1188. The trial judge described this scheme as "one of the largest and most serious frauds involving environmental crimes ever prosecuted in the United States." United States v. Paccione, 751 F. Supp. 368, 371 (S.D.N.Y. 1990).

Another illegal waste disposal scheme also prominently featured haulers of construction and demolition debris. This scheme involved certain "cover" programs instituted by the City of New York at Fresh Kills, under which the City obtained materials needed to cover the garbage and other waste dumped at the landfill. Under the "free cover" program, transfer stations and carting companies could dispose of "clean fill" (i.e., soil uncontaminated by debris) at Fresh

Kills free of charge. Under the "paid cover" program, the City contracted with and paid carting companies to bring clean fill to Fresh Kills. Numerous transfer stations and carters, however, abetted by corrupt City sanitation workers, dumped non-qualifying materials (including C & D) at Fresh Kills under the guise of clean fill. This was done by "cocktailing" the refuse: Refuse was placed beneath, and hidden by, a layer of dirt on top of a truckload. When the trucks arrived at Fresh Kills, they appeared to contain nothing but clean fill, which could be dumped free of charge.

In 1994, twenty-eight individuals, including numerous owners of transfer stations and carting and trucking companies, were indicted in connection with this scheme, which deprived the City of approximately $10 million in disposal fees. The indictments charged that from January 1988 through April 1992, the defendants participated in a racketeering conspiracy and engaged in bribery and mail fraud in connection with the operation of the City's "cover" programs. The various hauling companies, from Brooklyn, Queens, and Staten Island, were charged with paying hundreds of thousands of dollars in bribes to Department of Sanitation employees to allow them to dump non-qualifying materials at Fresh Kills without paying the City's tipping fees. See United States v. Cafra, et al., No. 94 Cr. 380 (S.D.N.Y.); United States v. Barbieri, et al., No. 94 Cr. 518 (S.D.N.Y.); see also United States v. Caccio, et al., Nos. 94 Cr. 357,358, 359, 367 (four felony informations). Twenty-seven defendants pleaded guilty in 1994 and 1995, and the remaining defendant was found guilty in 1996 after trial.

In sum, the need to root organized crime and other forms of corruption out of the City's waste removal industry applies with equal force to the garbage hauling and the C & D sectors of the industry. Local Law 42 recognizes this fact in requiring C & D haulers to obtain registrations from the Commission in order to operate in the City.

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs ("DCA") for the licensing and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code §16-503. "Trade waste" is broadly defined and specifically includes "construction and demolition debris." Id. § 16-501(f)(1). 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). The United States Court of Appeals has definitively ruled, that 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).

Local Law 42 specifically permits the Commission to refuse to issue a registration to an applicant "who has knowingly failed to provide the information and/or documentation required by the commission pursuant to [Title 16 of the Administrative Code or any rules promulgated thereto]" or "who has otherwise failed to demonstrate eligibility for such license." Admin. Code §16-509(b). Applicants who knowingly fail to provide information required by the Commission (whether they fail to provide the information altogether or they provide false and misleading information) fall under the first prong. In Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); *leave denied*, 2 N.Y.3d 705 (2004), the Appellate Division affirmed the authority of the Commission to "review" exemption applications, to fully investigate any matter within its jurisdiction and to deny such applications in those cases **"where the applicant fails to provide the necessary information, or knowingly provides false information."** (emphasis added) It further affirmed the authority of the Commission to investigate the accuracy of the information provided in an application. Id.

Applicants who fail to demonstrate good character, honesty and integrity using the criteria by which license applicants are judged fall under the second prong of §16-509(b). While the Appellate Division in Attonito did not directly address the second prong, by affirming the Commission's authority to investigate matters within the trade waste industry, it necessarily follows that the Commission need not ignore the results of its investigation that bear on an applicant's good character, honesty and integrity. Id.; accord Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008) (Commission denial not arbitrary and capricious where based on a criminal conviction, identification as an organized crime associate, and false and misleading statements). Accordingly, the Commission evaluates whether applicants meet the fitness standard using the same criteria upon which license applicants may be denied, including:

1. failure by such applicant to provide truthful information in connection with the application;

2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;

3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;

4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;

5. commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. §1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;

6. association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;

7. having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;

8. current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;

9. the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;

10. failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Admin. Code §16-509(a)(i)-(x). While the presence of one of the above factors in the record of a registration applicant would not necessarily require a denial as a matter of law, the Commission may consider such evidence as a factor in determining overall eligibility.

II. History

Donald and Mary Ann Von Weken incorporated Amanda Carting Corp, ("Amanda" or the "Applicant") on July 25, 1989. See records from the New York State Department of State Division of Corporation Entity Information. On August 30, 1996, Amanda filed an application with the Commission seeking an exemption from licensing requirements and a registration to operate a trade waste business solely engaged in the removal of construction and demolition debris. See Amanda's Application for a Class II registration for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris. On the application, Amanda reported two principals: Donald Von Weken, the company's president, and his wife, Mary Ann Von Weken.[1] On August 12, 1998, the Von Wekens were both deposed under oath by members of the Trade Waste Commission staff. Donald Von Weken testified at his deposition that Toby Romano ("Romano"), his longtime friend and employer, told him to start Amanda so that Breeze Carting Corp.[2] ("Breeze") could subcontract hauling to Amanda.[3] In his testimony, Donald Von Weken acknowledged that he started Amanda at Romano's direction around the time that Romano went to prison for bribing an EPA asbestos inspector.[4]

Breeze is one of several companies controlled, directly or indirectly by Romano, an alleged associate of the Lucchese crime family.[5] [6] In sworn testimony during the 1992 federal racketeering trial of Luchese capo Joseph Giampa, Alphonse D'Arco, a former acting boss of the Luchese crime family and one of the highest ranking members of organized crime ever to become a government witness, identified Romano as a Luchese crime family associate. See United States v. Giampa, S92 Cr. 437 (SDNY).[7]

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[1] Mary Ann Von Weken is also a corporate officer, and she and her husband each hold fifty percent (50%) of the company's stock. See Registration application, Schedule A ("Principals of Applicant").

[2] Breeze Carting Corp. is a waste management and demolition company formed in 1985 that's owned by Toby Romano Sr., an alleged associate of the Luchese crime family.

[3] See Transcript of August 12, 1998 deposition of Donald Von Weken ("DVW deposition") at 31, 33.

[4] See DVW deposition at 40-43. The conviction is discussed in more detail in the Commission's decision denying Breeze's application. See n. 16, infra Romano's conviction was upheld in 1989, the same year that Amanda was incorporated. See Id.

[5] See Breeze registration application, Schedule E ("Non-Trade Waste Business (es) of Applicant Business"); and principal disclosure form for Toby Romano, Schedule B ("Non-Trade Waste Business (es)"). Included in this group of present or former Romano-controlled companies are Breeze National Inc., Breeze Contracting Corp., Breeze Demolition Inc. and A&B Metro Demolition Inc. (the last two entities are presently inactive according to records of the New York State Department of State).

[6] Toby Romano owns forty percent (40%) of Breeze's stock. The only other Breeze principals are members of Romano's immediate family his wife: Mary Romano, their son, Toby Louis Romano, and their daughter, Erika Romano, each is a twenty percent (20%) shareholder. See Breeze application, Schedule A ("Principals of Applicant").

[7] Q. Directing your attention to the same time period, approximately the winter of 1991, did you participate in a conspiracy to murder a man by the name of Toby Romano?

A. Yes, I did.

Breeze applied for a registration from the Commission on August 30, 1996. After a several year long investigation, on October 24, 2006, the Commission issued a decision denying the Breeze application.[8] The grounds for the Breeze denial were Romano's conviction on multiple federal felony counts for making or promising illegal payoffs to an EPA asbestos inspector, evidence linking Romano to organized crime, and Breeze's knowing provision of false information and failure to provide information in its application. Additionally, Breeze refused to accept a monitor as a condition of registration.[9] The Commission's decision was affirmed by the New York State Supreme Court Appellate Division-First Department ("1st Dept.") which held, "There was a rational basis for the finding that petitioner failed to demonstrate eligibility for exemption from licensing on the ground that petitioner's president was convicted of bribing a public official and identified as a associate in organized crime, and where petitioner rejected a reasonable condition of registration, namely the submission of a monitor to oversee operations for one year." (citation omitted) Breeze Carting Corp v. City of New York 52 AD3d at 424 [1st Dept. July 26, 2008].

In the wake of the Breeze denial, the Commission continued to investigate Amanda's application. Of particular concern was Amanda's current relationship with Breeze and Romano. In testimony by Donald Von Weken to the Trade Waste Commission on August 12, 1998, Donald Von Weken stated that Amanda and Breeze, together with Romano's other companies, share office space, staff and equipment.[10] Most of Amanda's employees are shared with Breeze, which has a larger work force than Amanda.[11] Amanda and Breeze have the same office manager and the same dispatcher.[12] On October 20, 2009, Toby Romano was deposed by the New York City Department of Investigation. During the deposition, Romano testified that Breeze placed employees on Amanda's payroll and Amanda was later reimbursed by Breeze.

In order to determine the exact relationship between Amanda, Breeze and Romano, the Commission requested numerous documents and scheduled an interview for both the Von Wekens on August 26, 2009.

Q. Who is Toby Romano?

A. Toby Romano was an associate of the Luchese family. He owns a big construction company, demolition company called Breeze, they do major demolition jobs, and Anthony Casso spoke to me on the phone and told me that Toby had received a prison sentence for bribing on asbestos, bribing an inspector. He did get a year in prison....

[8] See Decision of the Business Integrity Commission Denying the Exemption Application of Breeze Carting Corp. for Registration to Operate as a Trade Waste Business, dated October 24, 2006.

[9] Amanda also refused to accept a monitor.

[10] See Registration applications, Part I, response to question 11. The other Romano-controlled companies that share or once shared administrative offices with Amanda and Breeze are Breeze National Inc., Breeze Contracting Corp. and A&B Metro Demolition Inc. Additionally, See Transcript of August 12, 1998 deposition of Donald Von Weken ("DVW deposition") at 62, 75, 76

[11] See Registration applications, Schedule F ("Employees of Applicant").

[12] See Registration application and deposition

III. DISCUSSION

The Commission has reviewed the Application and has conducted a background investigation of the Applicant. On January 29, 2009, the staff issued a ten page recommendation that the Application be denied (the "Recommendation"). On January 29, 2009, the Commission sent the Recommendation to the Applicant's business address. The Applicant did not submit any response to the staff's Recommendation. For the reason set forth below, the Applicant has failed to demonstrate eligibility for a registration. Therefore, the Commission denies the Application and finds the Applicant lacks good character, honesty, and integrity.

1. The Applicant Knowingly Failed to Provide Information and Provided False and Misleading Information to the Commission.

A. Donald Von Weken & Mary Ann Von Weken refused to provide testimony to the Commission.

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 Applicant refused to supply materials and relevant documents to the Commission and both of its principals have refused to appear for scheduled interviews.

By letter sent August 12, 2009, the Commission directed Donald Von Weken to appear at the Commission offices for an interview on August 26, 2009 to testify. In the same directive the Commission ordered Amanda to provide material and relevant business documents by August 21, 2009.[13] Additionally, Mary Ann Von Weken was directed to appear before the Commission on the same day for a separate interview and to provide documents. See letter from the Commission to the Applicant dated August 12, 2009. The August 12, 2009 letter advised the Applicant that Donald and Mary Ann Von Weken's "failure to appear... is an adequate ground upon which to deny [Amanda's] registration application." See id.

Of central concern were Amanda's and the Von Wekens' business relationship with Breeze and Romano; the steps that the Von Wekens had taken to sever any connections with Breeze and Romano; and Amanda's refusal to accept a monitor.

In a telephone conversation with Assistant Commissioner for Legal Affairs/Deputy General Counsel John Curry, Donald Von Weken refused to appear

[13]Documents that were requested include Amanda Carting Corp.'s most recent employee list along with the corresponding 2008 W-2, W-4, and 1099 forms; copies of federal, state, and local tax returns with all supporting schedules for years 2005-2008; list of all current principals and their titles of Amanda Carting Corp.

before the Commission and indicated that his wife, Mary Ann Von Weken, would also not appear at Commission office as requested.

Donald Von Weken was advised that a failure to appear for an interview and failure to provide the requested documents is an adequate ground upon which to deny the registration application. Neither Donald nor Mary Ann Von Weken provided the requested documents by August 21, 2008 or appeared on August 26, 2009.

The Applicant does not refute this point. Accordingly, the Commission denies Amanda Carting Corp.'s Application on this independently sufficient ground.

III. CONCLUSION

The Commission is vested with the broad discretion to refuse to issue a license or registration to any applicant that it determines lacks good character, honesty, and integrity. The evidence recounted above demonstrates convincingly that Amanda Carting Corp. falls short of that standard. For the reason discussed above, the Commission hereby denies Amanda Carting Corp.'s Application.

This exemption/registration denial decision is effective immediately. The Applicant shall not service any customers or otherwise operate a trade waste removal business in the City of New York.

Date: March 18, 2010 THE BUSINESS INTEGRITY COMMISSION

Michael J. Mansfield
Chairman

John Doherty, Commissioner
Department of Sanitation

Rose Gill Hearn, Commissioner
Department of Investigation

Andrew Eiler, Director of Legislative Affairs (designee)
Department of Consumer Affairs

Deborah Buyer, General Counsel (designee)
Department of Small Business Services

Brian O'Neill, Inspector (designee)
New York City Police Department