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 C.P.Q. FREIGHT SYSTEMS, INC. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS**

C.P.Q. Freight Systems, Inc. (the "Applicant" or "C.P.Q.") has applied to the New York City Business Integrity Commission ("Commission"), formerly named the New York City Trade Waste Commission, pursuant to Local Law 42 of 1996, for an exemption from licensing requirements for the removal of construction and demolition debris. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a). Local Law 42 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.

C.P.Q. applied to the Commission for a registration enabling it 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 applications for registration. See id. If, upon review and investigation of the application, the Commission grants the Applicant a registration, the Applicant becomes "exempt" from the licensing requirement applicable to businesses that remove other types of waste. See id.

In determining whether to grant 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); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008); 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 §16-513(a)(i) (authorizing suspension or revocation of license or registration for violation of Local Law 42 or any rule promulgated pursuant thereto). Central to the Commission's investigation and determination of a registration 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").

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

A. The Applicant has failed to demonstrate eligibility for a registration because it repeatedly engaged in unregistered trade waste removal activity.

B. The Applicant knowingly provided false and misleading information and failed to provide information and/or documentation to the Commission in connection with the application.

## 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. See Attonito v. Maldonado, 3 A.D.3d 415, 771 N.Y.S.2d 97 (1st Dept. 2004).

**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); Attonito, 3 A.D.3d 415.

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." 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. THE APPLICANT

On January 11, 2007, C.P.Q. applied to the Commission for an exemption from the licensing requirements for the removal of construction and demolition debris. See C.P.Q.'s Application for Exemption from Licensing Requirement for Removal of Demolition Debris ("Registration Application"). The Commission staff conducted an investigation of the Applicant, including, on May 9, 2007, taking sworn testimony at a deposition of its sole disclosed principal, Osleivy Gomez ("Gomez"). See C.P.Q.'s Registration Application at 9.

On March 24, 2009, the staff issued an eleven-page recommendation that the Registration Application be denied (the "Recommendation"). On March 24, 2009, two detectives of the New York City Police Department ("NYPD") assigned to the Commission went to the Applicant's business address to personally serve the Recommendation.[1] See Detective Martin Complaint Follow-Up Informational Sheet ("Complaint Follow-Up Informational Sheet"). Upon arrival at the location, the detectives did not observe any trucks, equipment, or offices marked C.P.Q. They entered the building at the location and spoke with an unidentified male, who stated that he never heard of C.P.Q. He directed the detectives across the street to the main office at the location. See Complaint Follow-Up

[1] 17 RCNY §1-02 provides "unless otherwise provided, all notice pursuant to this chapter, including by not limited to notice related to hearings, violations and subpoena, may be served by first class mail addressed to the business address provided for an applicant, licensee, or registrant on the application submitted to the Commission or on the license or registration issued to the business.... Such notice may also be served by personal service or in any other manner reasonably calculated to achieve actual notice, including but not limited to any method authorized in the Civil Practice Law and Rules. Although not required, the Commission first attempted personal service of the Recommendation at the Applicant's business address provided in the Registration Application. See Registration Application at 1.

Informational Sheet. The detectives then spoke with a male who identified himself as Kevin Darrar. He stated that "Juan Carlos"[2] is the owner of C.P.Q., not Osleivy Gomez, and that C.P.Q. has not operated out of the location for approximately seven months. Darrar was unable to provide the detectives any further information regarding the new location of C.P.Q., Juan Carlos, or Osleivy Gomez. See Complaint Follow-Up Informational Sheet.

On or about March 24, 2009, by FedEx Priority Overnight, the Commission sent the Recommendation to the Applicant's business address. FedEx records indicate that on March 25, 2009, FedEx courier was unable to deliver the Recommendation, as the Recipient was no longer at the location. See FedEx Track and Confirm results printout, tracking number 837134387022. On March 26, 2009, the package was returned as undeliverable and the contact telephone number provided to FedEx was disconnected.[3] See FedEx envelope.

On or about March 25, 2009, by FedEx Priority Overnight, the Commission sent the Recommendation to the Applicant's home address and to the address of the Applicant's designated agent for service of process in New York City. See C.P.Q.'s Registration Application at 2. On March 26, 2009, "M. Gomez" signed for receipt of the Recommendation at the principal's home address. See FedEx proof-of-delivery printout, tracking number 837134385660. On the same date, the package that was mailed to the Applicant's agent for service of process was returned as undeliverable because of an "incorrect address."[4] See FedEx, Track and Confirm results printout, tracking number 837134385637.

The Applicant did not submit any response to the staff's Recommendation.

The Commission has carefully considered the staff's Recommendation. For the reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity, and has failed to demonstrate eligibility for a registration. Therefore, C.P.Q.'s Registration Application is denied.

## III. GROUNDS FOR DENIAL

### A. The Applicant has failed to demonstrate eligibility for a registration because it repeatedly engaged in unregistered trade waste removal activity

The Commission is authorized to deny the license application of a company that has engaged in unlicensed carting activity in the City of New York. See Admin. Code §§16-505(a), 16-509(c)(ii), 16-513(a)(i). Further, as discussed above, the Commission has the same authority with respect to applications for exemption from the licensing requirements. See C.P.Q.'s Registration Application at 4-6.

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[2] As discussed below, Gomez submitted to the Commission an Affidavit of Title for C.P.Q. that bears the names Osleivy Gomez and Juan Carlos Guerra. The obvious conclusion is that "Juan Carlos" is a reference to Carlos Guerra.

[3] All applicants are required to update material changes in information, which includes the business address. See 17 RCNY §2-05(b), §1-01; Registration Application

[4] See infra at footnote 2.

The Applicant filed for authority to do business as a foreign corporation in New York on October 31, 2006.[5] See Registration Application. This company has never held a carting license or registration issued by Department of Consumer Affairs, Trade Waste Commission, or Business Integrity Commission, and has never been legally authorized to operate a trade waste business in the city of New York. Nevertheless, as discussed below, the Applicant continuously operated a trade waste removal business in the city of New York without the requisite legal authority.

On October 22, 2007, at approximately 12:43 p.m., a Commission investigator observed a 1996 Kenwood truck with C.P.Q.'s name marked on both sides of the vehicle and with New Jersey license plates carrying trade waste from a location on the corner of Wilson Avenue and George Street in Brooklyn, New York. The investigator observed that the truck, registered to C.P.Q., was devoid of Commission issued registration plates.[6] See Commission Notice of Hearing, TW-1977.

As a result, on November 8, 2007, C.P.Q. was charged administratively with operating an unlicensed or unregistered waste removal business in violation of §16-505(a) of Chapter 1, Title 16-A, of the New York City Administrative Code (Admin Code §16-505(a)). See Commission Notice of Hearing, TW-1977.

On or about January 4, 2008, the Applicant and the Commission entered into a Stipulation of Settlement, wherein the Applicant admitted that on October 22, 2007, it had operated a business for the purpose of the collection of trade waste without having first obtained the appropriate license or registration from the Commission, in violation of Admin. Code §16-505(a). In accordance with the Stipulation of Settlement, the Applicant paid the Commission a fine of $2,500 on January 30, 2008. See Stipulation of Settlement, TW-1977.

Notwithstanding the above fine, again, on June 23, 2008, C.P.Q. transported trade waste in the city of New York without authorization from the Commission. At that time, Alejandro Fallo ("Fallo"), operating a C.P.Q. truck, careened into a parked bus at Canal Street and the Bowery injuring himself and four others, and killing a pedestrian.

A New York State Department of Transportation ("NYSDOT") employee inspected the dump truck at the site and observed that the truck was operating with three brake hoses that were severely deteriorated, inoperable brake lamps, a loose brake air reservoir, a loose brake chamber and a defective brake warning device. As a result, the NYSDOT issued C.P.Q. a citation for a civil violation.[7] See "Truck Was Unsafe, Crash Inquiry Find," The New York Times, June 25, 2008.

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[5] The Applicant filed for authority to do business in New Jersey on November 29, 1999. Subsequently, its active corporate status in New Jersey was revoked for not filing an annual report for two consecutive years. See New Jersey State Business Gateway Service printout.

[6] Upon being registered by the Commission, the Commission issues two license plates for each vehicle that will transport trade waste. See RCNY §7-03.

[7] During her deposition before the Commission, Gomez testified that she and Carlos Guerra purchased "regular trucks" and converted them into dump trucks. For a discussion of Carlos Guerra, an undisclosed principal of the Applicant, and his involvement with C.P.Q. see infra at 9.

On June 23, 2008, Commission investigators interviewed Fallo at the hospital, where he was admitted for injuries related to the accident. During the interview, Fallo stated that he was employed by C.P.Q. as a driver for over four months, and during that time period, he worked in New York City approximately two-to-four times per week.[8] See June 24, 2008, Memo from Edward Miranda to File.

As a result of this unlicensed activity, on July 2, 2008, Gomez was arrested and charged with unlicensed collection of trade waste, a misdemeanor. See Al Baker, "Charge Filed Against Chief of Truck Firm After Crash," The New York Times, July 3, 2008. Gomez pled guilty to the charge in Manhattan Criminal Court and paid a fine of $1,000. See New York State Unified Court System WebCrims, August 12, 2008, for Gomez printout.

The Applicant's repeated unlicensed activity demonstrates disregard for the Commission's rules and regulations. Moreover, in addition to operating without the appropriate registration, the Applicant operated a truck that had defective brakes, causing a fatality. This behavior also demonstrates the Applicant's disregard for the safety of the public. Under the circumstances, the Applicant's unlicensed or registered carting is strong evidence of the Applicant's lack of good character, honesty and integrity and merits the denial of its registration application. The Applicant does not refute this point. Accordingly, the Commission denies C.P.Q.'s registration application on this independently sufficient ground.

**B. The Applicant failed to disclose a principal, failed to provide information and/or documentation to the Commission and knowingly provided false and misleading information**

The Commission may refuse to issue a license or registration to an applicant who has failed "to provide truthful information in connection with the application," (see Admin. Code §16-509(a); Attonito, 3 A.D.3d 415. See also Breeze Carting Corp. v. The City of New York, 52 A.D.) or who fails to provide information otherwise required by the Commission. See Admin. Code §16-509(b).

The Application ran afoul of both of these provisions. Accordingly, the Commission denies C.P.Q.'s Registration Application for the following independently sufficient reasons:

**1. The Applicant failed to disclose Charles Guerra as a principal of the Applicant**

**a. The Applicant failed to disclose Charles Guerra as a past principal of the Applicant in its Registration Application**

Schedule B of the Registration Application instructed the Applicant to list the past principals of the applicant business. See Registration Application at 11. The Applicant did not disclose anyone. Additionally, Schedule A, which asks for all current principals, lists only Gomez. See Registration Application at 9. Gomez's own testimony, however,

[8] A Commission investigator retrieved handwritten directions for four job sites in Brooklyn and Queens from the C.P.Q. truck at the crash cite.

demonstrates that Carlos Guerra ("Guerra") was a principal of C.P.Q. from its inception until at least 2006.

On or about April 30, 2007, Gomez submitted to the Commission a Bill of Sale for the sale of assets and property of C.P.Q., dated February 24, 2005, that bore both Gomez and Guerra's names and an Affidavit of Title, dated February 24, 2005, stating that both are officers of C.P.Q. This documentation directly contradicts Gomez's sworn application that she is and has always been the sole owner of C.P.Q.

Furthermore, Gomez testified before the Commission that in 2005, she and Guerra purchased C.P.Q. for $200,000. See Gomez Deposition Transcript ("Gomez Tr.") at 29. She testified that they both invested $100,000 in the business.[9] Gomez also testified that the price of C.P.Q. included three trucks. See Gomez Tr. at 35. Subsequently, Gomez and Guerra purchased approximately six more trucks. See Gomez Tr. at 36. Gomez testified that while she owned C.P.Q., she continued to work full-time as a secretary at a construction company, Two Countries Construction.[10] See Gomez Tr. at 20. Guerra operates a repair service at the same location where Two Countries Construction operates. See Gomez Tr. at 39.

Notwithstanding all the evidence indicating that Guerra has been an owner of the Applicant since February 2005, the Applicant failed to properly disclose Guerra as a past principal of the Applicant.

**b. The Applicant failed to disclose Guerra as a present principal of the Applicant**

Although Gomez attempted to convince the Commission that Guerra is no longer a principal, her assertions are not credible. Gomez testified that she and Guerra "separated" as partners in 2006. See Gomez Tr. at 39. She stated that she took the name of the company, the customers, and all the trucks. See id. The weight of her testimony, however, demonstrates that Guerra is still a principal of the company.

First, Gomez testified that she moved the company to the location disclosed on the Registration Application, a property owned by Guerra and on which he also operates his auto repair shop. See id. Next, Gomez testified that she did not pay Guerra for his interest in C.P.Q. since they "separated." See id. Accordingly, Gomez's testimony indicates, that she has not severed her relationship with Guerra and that he continues to serve as a principal of C.P.Q. Finally, as further discussed below, the Commission gave Gomez the opportunity to support her claims that Guerra was no longer a principal or owner of the company. Gomez, however, completely failed to respond to the Commission's request in any way even after being informed that the failure to respond may result in the denial of the instant application.

Moreover, as discussed above, Kevin Darrar, who was present at the Applicant's business address and appeared to be familiar with the company, stated to the NYPD detectives, who attempted to personally serve the Recommendation, that he knew "Juan

[9] Gomez testified that to pay for her half of C.P.Q., she sold her house in New Jersey for approximately $95,000-to-$97,000 and paid the balance with funds from her savings account.
[10] Two Countries parks their vehicles at the same location where C.P.Q. previously operated.

Carlos" (also known as Juan Carlos Guerra) to be the owner of C.P.Q., not Gomez. See Complaint Follow-Up Informational Sheet.

The failure of the Applicant to provide complete and truthful information to the Commission, a point not refuted by the Applicant, is evidence that the Applicant lacks good character, honesty and integrity. The Commission denies C.P.Q.'s registration application based on this independently sufficient ground. See Admin. Code §§16-509(b); 16-509(a)(i).

**2. The Applicant failed to respond to the Commission's request for information and/or documentation**

In light of Guerra's role in C.P.Q., the Commission obtained his criminal history, which indicated that Guerra was arrested in 1991 in New Jersey for "conspiracy armed hijack" and in 1992 in Texas for "conspiracy to extort interstate." Subsequently, he was convicted and sentenced to 51 months in 1992 for the hijacking arrest, and 51 months in 1995 related to the 1992 arrest. See Criminal History Printout for Guerra.

As a result of Gomez's testimony, documentation evidencing Guerra's interest in C.P.Q., and Guerra's criminal history, on January 23, 2008, Commission staff sent the Applicant a letter requesting documentation to support Gomez's claims that Guerra is no longer associated with C.P.Q. Specifically, the Commission requested, all paperwork evidencing C.P.Q.'s lease/rental agreement pertaining to the current garage/business location, Guerra's role in the company where Gomez works as a secretary and more detailed information regarding Gomez's professional and personal relationship with Guerra. The Commission directed the Applicant to produce these records to the Commission's offices before the close of business on February 7, 2008. See January 23, 2008 letter from Senior Special Counsel Leigh Neren ("Leigh Neren") to Gomez. The Applicant failed to respond to the Commission's request for information and documentation in any manner.

Therefore, Commission staff sent another request, entitled "final notice" with a deadline of February 29, 2008. See February 19, 2008 letter from Leigh Neren to Gomez. This letter directed the Applicant to provide the previously-requested documentation and/or information by that date. It also informed Gomez: "Be advised that the failure to provide information requested by the Commission may result in the denial of your application. See Admin. Code §16-509 (b)." See February 19, 2008 letter from Leigh Neren to Gomez. Despite this warning, as of the date of this denial, the Applicant has knowingly failed to provide the requested information.

By failing to respond to the Commission's repeated requests, the Applicant has "knowingly failed to provide the information" required by the Commission and has demonstrated that it lacks good character, honesty and integrity. The Applicant does not contest this point. Accordingly, the Commission denies C.P.Q.'s application on this independently sufficient ground.

**3. The Applicant knowingly provided false and misleading information to the Commission**

In addition to concealing Guerra's role with C.P.Q. in the registration application, the Applicant knowingly provided false and misleading information to the Commission by

submitting a false Certification for Temporary Permission to Operate Pending Decision on Application ("Temporary Application") on or about January 10, 2007, when she answered Question 1 of the application:

> Has the applicant business or any past or current principal of the applicant business, been convicted of any misdemeanor or felony in any jurisdiction during the past 15 years? Include misdemeanor charges, felony charges, and all non-traffic violations (including DWIs).

The Applicant falsely answered, "No." See Temporary Application at 1. Gomez swore before a notary public that that statement was true. See Temporary Application at 2. As demonstrated above, Guerra was convicted and sentenced twice for serious offenses. The Applicant knowingly failed to provide accurate and truthful information in the Registration Application and Temporary Application. Additionally, when the Commission requested information regarding Gomez's false sworn submissions to the Commission, Gomez repeatedly failed to provide the requested information. Neither of these points is refuted by the Applicant. Although the Commission is not required to provide a motive for such false filing, it is likely that Gomez attempted to conceal Guerra's affiliation with the Applicant because Gomez believed that such an affiliation would result in the denial of the instant application. This failure of the Applicant to provide truthful and complete information to the Commission constitutes independent grounds for the conclusion that the Applicant lacks good character, honesty and integrity. Therefore, the Applicant's Registration Application is denied. See Admin. Code §16-509(b).

## IV. CONCLUSION

The Commission is vested with 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 C.P.Q. falls short of that standard. For the reasons discussed above, the Commission hereby denies C.P.Q. Freight Systems, Inc.'s Application.

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

Dated: April 14, 2009

THE BUSINESS INTEGRITY COMMISSION

Michael J. Mansfield
Chairman

John Doherty, Commissioner
Department of Sanitation

Jayne Naberezny, Inspector General (designee)
Department of Investigation

Jonathan Mintz, Commissioner
Department of Consumer Affairs

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

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