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 DUTCHIE ENTERPRISES LLC, D/B/A ADJ WHOLESALE PRODUCE FOR REGISTRATION AS A WHOLESALE BUSINESS IN A PUBLIC WHOLESALE MARKET

Local Law 28 of 1997 ("Local Law 28") and the rules promulgated thereunder require that wholesale businesses located or operating within a public wholesale market register with the Commissioner of the Department of Business Services. See New York City Administrative Code ("Admin. Code") §22-253; 66 RCNY §§1-12, -13; 17 RCNY §§11-02, -04. The duties of the Commissioner of the Department of Business Services were later transferred to the Commissioner of the Organized Crime Control Commission ("Commissioner"), pursuant to a charter revision provision approved by the voters in November 2001. The Organized Crime Control Commission was subsequently renamed the Business Integrity Commission, ("Commission"), pursuant to Local Law 21 of 2002.

The Commission may refuse to register a wholesale business when any of its principals lacks good character, honesty and integrity. See Admin. Code §§22-253(b), 22-259(b); New York City Charter §2101(a), (b). Administrative Code §22-259(b) lists a number of factors which the Commission may consider in determining the fitness of an individual or a wholesale business. Among the factors that the Commission may consider in making a fitness determination are: association with any member or associate of an organized crime group (id. at §22-259(b)(v)), failure to provide truthful information in connection with its registration application (id. at §22-259(b)(i)), and a pending indictment or criminal action against such applicant or person for a crime which would provide the basis for denial (id. at §22-259(b)(ii)). Local Law 28 makes clear that the Commission is not limited to consideration of the enumerated factors; the list is meant to be illustrative and not exhaustive.

Based upon the record of Dutchie Enterprises LLC, d/b/a ADJ Wholesale Produce ("Dutchie" or the "Applicant"), the Commission denies the application of Dutchie for registration as a wholesaler for the following reasons:

A. The Applicant Failed to Provide Truthful Information in Connection With the Application.

1. The Applicant Failed to Disclose to the Commission that John Caggiano is a Principal of the Applicant.

2. The Applicant Failed to Disclose to the Commission that John Caggiano is a Convicted Felon and Has Ties to Organized Crime.

3. The Applicant Failed to Disclose to the Commission that Ralph Balsamo is a Soldier in the Genovese Organized Crime Family.

B. John Caggiano, a Principal of the Applicant, Has Been Publicly Identified By Law Enforcement as an Associate of The Genovese Organized Crime Family, and Has Associated With Other Organized Crime Figures and Convicted Racketeers.

C. The Applicant Failed to Provide Truthful Information to the Commission in Connection With the Application by Refusing to Cooperate With the Commission.

I. THE APPLICANT

On March 22, 2010, the Applicant filed an application for registration as a wholesaler in a public wholesale market (the "Registration Application"). The Applicant disclosed that it operates in the area adjacent to the New York City Terminal Produce Cooperative Market ("Hunts Point Market" or "Market").[1] The disclosed principals of the Applicant are Joseph J. Balsamo ("Joseph Balsamo") and his wife, Lee Ann Tomasetti. See Registration Application at 22.[2] Neither Lee Ann Tomasetti nor Joseph Balsamo have disclosed to the Commission that they

[1] This area adjacent to the New York City Terminal Produce Cooperative Market is included within the definition of a public wholesale market and subject to the Commission's jurisdiction. See 17 RCNY §11-02.

[2] Joseph Balsamo's brother is Ralph "the Undertaker" Balsamo. See Principal Information Form submitted by Joseph Balsamo at 12. Ralph Balsamo has been publicly identified by the United States Attorney for the Southern District of New York and the District Attorney of New York as a soldier in the Genovese organized crime family. See Government's Memorandum of Law in Opposition to Balsamo's Application for Pre-Trial Release, United States of America v. Ralph Balsamo, (S2 06 Cr. 008(LAK) ("Balsamo Memorandum") at 1; Press Release, New York County District Attorney's Office, dated November 9, 2006 ("November 9, 2006 Press Release"). On February 23, 2006, Ralph Balsamo was charged in the Southern District of New York with conspiring to participate in the affairs of the Genovese organized crime family, a racketeering enterprise, in violation of Title 18, United States Code, Section 1962(d). In addition, Ralph Balsamo was charged with engaging in various criminal activities with other members and associates of the Genovese organized crime family over the past two decades, including conspiracy to distribute five kilograms or more of cocaine, the use and possession of a firearm in relation to a crime of violence, conspiracy to traffic in firearms, obstruction of justice by tampering with a witness, illegal gambling and a labor racketeering scheme in which he and others attempted to corruptly influence certain elected officials of Local 15 of the International Union of Operating Engineers in order to benefit other members and associates of the

have any experience in the food industry. Lee Ann Tomasetti is a real estate broker who presently works for Houlihan Lawrence. See Lee Ann Tomasetti Principal Information Form at 4. Joseph Balsamo is presently an owner and manager of several family owned funeral homes. See Joseph Balsamo Principal Information Form at 5. Joseph Balsamo's brother, Ralph Balsamo, who has been publicly identified as a soldier in the Genovese organized crime family, is or was a partner in the Balsamo family's funeral home business. The federal government has asserted that one of the Balsamo funeral homes in the Bronx "was often used as a meeting place for members and associates of the Genovese Organized Crime Family." See Balsamo Information at 5.

The weight of available evidence establishes that this Applicant is controlled by John Caggiano ("Caggiano"), and is the successor business to C&S Wholesale Produce, Inc. ("C&S"), a company whose application for a registration as a wholesale business was denied by the Commission on May 8, 2007. See Decision of the Business Integrity Commission Denying the Application of C&S Wholesale Produce Inc. for Registration as a Wholesale Business at the New York City Terminal Market and Revoking the Temporary Photo Identification Card of John Caggiano ("C&S Denial Decision"). It is therefore necessary at the outset to briefly describe the history of C&S and its principal, John Caggiano.

C&S was incorporated as a business on March 24, 1981. Caggiano was the sole owner and officer of C&S. See C&S Wholesaler Application at 10; Certification of Caggiano, dated June 7, 2006 (identifying changes to information in C&S's wholesaler application). On March 15, 1999, C&S applied for registration to do business as a wholesaler in the Market. See C&S Wholesaler Application.

After a lengthy investigation, on November 9, 2006, Caggiano and ten other people were arrested pursuant to an indictment in New York County Supreme Court on charges of running an illegal gambling ring at the Hunts Point Market. See November 9, 2006 Press Release. One of Caggiano's co-defendants was Joseph Balsamo's brother, Ralph "the Undertaker" or "Skully" Balsamo. See id. Caggiano, Ralph Balsamo, and six other co-defendants were each charged with one count of Enterprise Corruption, seven counts of Promoting Gambling in the First Degree and two counts of Possession of Gambling Records in the First Degree. See Indictment, New York v. Caggiano, et. al., Ind. #5664/2006 (N.Y. Cty)("Caggiano Indictment"); November 9, 2006 Press Release.[3] The indictment charged Caggiano with participating in a million-dollar gambling operation within the Hunts Point Market as part of a criminal enterprise – referred to as the "Hunts Point Market Group" – affiliated with the Genovese organized crime family. The indictment specifically identified Caggiano as the "lieutenant" of the enterprise, second to co-defendant Ralph Balsamo, a soldier in the Genovese organized crime family. Caggiano himself was also publicly identified as an associate of the Genovese organized crime family and the son-in-law of Dominick "Quiet Dom" Cirillo, the former acting boss of the Genovese organized

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Genovese organized crime family. On May 14, 2007, Ralph Balsamo was charged in a Superceding Information with one count of racketeering and pled guilty to the Information. See Information, United States of America v. Ralph Balsamo, S21 06 Cr. 08 (LAK) ("Balsamo Information"); Order of Forfeiture; Judgment in a Criminal Case. On September 28, 2007, Ralph Balsamo was sentenced to 97 months in prison. See id. Ralph Balsamo was also convicted for his role in an organized crime related criminal scheme in the Hunts Point Market. See infra.

[3] Such crimes are considered "racketeering activities" under Local Law 28. See Admin. Code §22-259(b)(iv)(citing 18 U.S. Code §1961 and NYS Penal Law §460.10).

crime family. See Caggiano Indictment at 5. As part of the criminal scheme, Caggiano was charged with directly controlling and supervising the day-to-day business of the illegal gambling operations within the market and authorizing and supervising two co-defendants the indictment identified as Genovese organized crime family associates, Robert Russo and Douglas Marleton, who acted as bookmakers. See Caggiano Indictment; November 9, 2006 Press Release.

On January 18, 2007, the Commission's staff served a recommendation to deny the application of C&S. See Executive Staff's Recommendation to the Business Integrity Commission to Deny the Application of C&S Wholesale Produce Inc. for Registration as a Wholesale Business at the New York City Terminal Market and Revoking the Temporary Photo Identification Card of John Caggiano. Within weeks, on February 5, 2007, ADJ Wholesale was incorporated. See New York State Department of State, Division of Corporations printout. On May 8, 2007, the Commission denied C&S' application based on Caggiano's public identification as an associate of the Genovese organized crime family and based on the above-mentioned indictment, which was then pending against Caggiano.[4] See C&S Denial Decision.[5]

On August 28, 2008, Caggiano pleaded guilty to Enterprise Corruption, a class B felony, and was sentenced to 1¼ to 4½ years in prison and $176,000 in forfeiture. Caggiano's co-defendant, Ralph Balsamo also pleaded guilty to Enterprise Corruption and was sentenced to 2½ to 7½ years in prison and paid $50,000 in forfeiture.

On or about November 10, 2008, Caggiano entered prison. Shortly thereafter, Joseph Balsamo petitioned the "Members of the Temporary Release Committee" by letter on behalf of Caggiano. The letter, which was drafted under the Applicant's letterhead, states, "please be advised that upon Mr. Caggiano's release from prison, we have offered him the full-time position of consultant with our company at the above referenced location..." See November 27, 2008 letter from Joseph Balsamo to the Members of the Temporary Release Committee. Then, on January 13, 2010, Caggiano testified at his Parole Board Hearing that "there's one company in particular that got in touch with me that wants me to help them ***manage their business,... they're not familiar with the produce business,... and they need someone to run it, manage it***, and show them how to save money, cut expenses down." See January 13, 2010 Parole Board Hearing Minutes at 14-15 (emphasis added). On May 3, 2010, Caggiano was released from prison under the supervision of the New York State Division of Parole. See Certificate of Release to Parole Supervision.

Upon Caggiano's release from prison and in accordance with his testimony to the Parole Board, Caggiano assumed control of the Applicant business. See January 13, 2010 Parole Board Hearing Minutes; March 3, 2011 New York State Parole Contact Comment. In fact, Caggiano admitted to his Parole Officer on October 26, 2010 that "he dissolved C&S Produce and made the company ADJ Wholesale which stand[s] for Ann Marie, Dominick and Joanna (the name of his wife an[d] two children)." See October 26, 2010 New York State Parole Contact Comment. Caggiano reported to the New York State Division of Parole that he was the "Office Manager" of the Applicant. See Caggiano New York State Division of Parole Financial Information

[4] The Commission simultaneously revoked Caggiano's temporary photo identification card.
[5] By decision dated December 12, 2007, Supreme Court Judge Judith J. Gische upheld the Commission's Decision. See C&S Wholesale Produce Inc. v. NYC Business Integrity Commission, 167221/01.

Questionnaire. In addition, admissions made by Caggiano and observations made by Caggiano's parole officer establish that Caggiano has been in complete control of the daily activities of the Applicant business. See March 3, 2011 New York State Parole Contact Comment. Furthermore, in addition to making regular payments to Caggiano, the Applicant also makes much larger regular payments to Caggiano's wife, Ann Marie Caggiano.[6] See Checks from Dutchie Enterprises LLC d/b/a ADJ Wholesale Produce to John Caggiano; See Checks from Dutchie Enterprises LLC d/b/a ADJ Wholesale Produce to Ann Marie Caggiano. However, neither Caggiano nor the Applicant disclosed to the Commission Caggiano's existence as an employee or principal of the company. See Registration Application. Similarly, Caggiano's wife, Ann Marie Caggiano was never disclosed to the Commission as an employee or principal of the Applicant. See Registration Application. Finally, the Applicant maintains the same telephone number (718) 617-1355 and facsimile number (718) 617-1416 as C&S. See C&S Wholesaler Application and Dutchie Registration Application. Thus, Caggiano is an undisclosed principal of the Applicant and the Applicant is the successor business to C&S. See infra.

The staff has conducted a background investigation of the Applicant and its principals. On December 21, 2011, the staff issued a 10-page recommendation that Dutchie's application be denied. See Executive Staff's Recommendation to the Business Integrity Commission to Deny the Application of Dutchie Enterprises LLC, d/b/a ADJ Wholesale Produce for a Registration as a Wholesale Business in a Public Wholesale Market ("Recommendation").

The Recommendation was served by regular mail and facsimile on the Applicant and the Applicant's attorney, Paul Gentile, Esq., on December 21, 2011, and the Applicant was given ten business days to respond. See 17 RCNY §11-17(a). The Applicant failed to submit a 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 denies its wholesale business Registration Application.

II. GROUNDS FOR DENIAL

A. The Applicant Failed to Provide Truthful Information in Connection With the Application.

The Commission may refuse to issue a registration to an applicant who has failed "to provide truthful information in connection with the application." See Admin. Code §22-259(b)(i). On March 22, 2010, the Applicant filed its application, which included Principal Information Forms for Lee Ann Tomaseti and Joseph Balsamo. Joseph Balsamo and Lee Ann Tomasetti each certified that the information in the application and the principal information forms was true and provided notarized signatures. See Registration Application at 27.

[6] Ann Marie Caggiano's father is Dominick "Quiet Dom" Cirillo, who has publicly been identified by law enforcement as the former acting boss of the Genovese Organized Crime Family. See Caggiano Indictment at 5.

1. The Applicant Failed to Disclose to the Commission that John Caggiano is a Principal of the Applicant.

Question 12 of the application requires the Applicant to "identify all individuals who are current principals of the applicant business and provide the information that is requested..."[7] The definition of "principal" (which is included in the instructions for the application) includes corporate officers and directors, all stockholders holding ten percent or more of the outstanding shares of the corporation *and all other persons participating directly or indirectly in the control of such business entity.* See Admin. Code § 22-251(g) (italics added). In response, the Applicant stated that Lee Ann Tomasetti and Joseph Balsamo each hold the position of "Member" of the Applicant business and each owns 50% of the Applicant business. See Registration Application at 3, 22. The Applicant disclosed no other principals. As established above, John Caggiano participates directly in the control of the Applicant business. The weight of available evidence, including the statements of Joseph Balsamo to the Temporary Release Committee of the Parole Board, the admissions made by Caggiano under oath to the Parole Board, and the business records of the Applicant establish that Caggiano is a principal of this Applicant.

The fact that the Applicant failed to disclose John Caggiano as a principal of the Applicant business is a plainly material omission: had Dutchie disclosed John Caggiano as a principal, its application would have been subject to denial on its face due to his recent criminal conviction stemming from criminal activity in the Hunts Point Produce Market and his public identification as an associate of the Genovese organized crime family.[8] Based upon the sequence of events and all available evidence, the logical conclusion is that the Applicant was incorporated with formal ownership of this company established in Joseph Balsamo and Lee Ann Tomasetti's names, so as to allow John Caggiano to carry on business in the produce market through nominees and surrogates in light of the likely event that the Commission would deny an application that contained his name.[9] The Applicant's failure to truthfully disclose to the Commission who is a principal of the company is evidence that the Applicant lacks good character, honesty and integrity. The Applicant did not dispute this point, leaving this ground uncontested. Accordingly, the Commission denies the Applicant's registration application on this independently sufficient ground.

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[7] Question 13 of the application requires the Applicant to "identify... any person or entity who was a principal of the applicant business at any point during the past (10) ten years." In response, the Applicant stated, "None." See Application at 3. In addition, Question 19 of the application requires the Applicant to "list the names, resident addresses, phone numbers, dates of birth, social security numbers, positions, work hours per week, and date hired for all employees hired or will be hired by the applicant business." See Application at 8, 24. Again, the Applicant did not disclose John Caggiano to the Commission.

[8] Both Joseph Balsamo and Lee Ann Tomasetti were knowing participants in the subterfuge. They each certified that the information contained in the application was true. As established above, the application was not truthful in that it did not disclose John Caggiano's status as a principal in Dutchie.

[9] Caggiano's statements to his Parole Officer confirm as much. On May 17, 2011, Caggiano was advised by his Parole Officer that as a condition of parole, he could not frequent the Hunts Point Market or the area adjacent to the market that is subject to the Commission's jurisdiction. In response, Caggiano explained, "that f_ _ _ _ _ BIC, how did they find out [?] I know it must have been the payroll, when we submitted the payroll my name was on it." See May 17, 2011 New York State Parole Contact Comment.

2. The Applicant Failed to Disclose to the Commission that John Caggiano is a Convicted Felon and Has Ties to Organized Crime.

Question 28 of the Principal Information Forms submitted by Joseph Balsamo and Lee Ann Tomasetti asks: "Do you know or have you ever knowingly been associated with, socially or professionally, any person known by you to be convicted of a felony or having ties with organized crime?" In response, Joseph Balsamo and Lee Ann Tomasetti each failed to disclose their association with Caggiano, who is a convicted felon and has ties to organized crime. See Joseph Balsamo Principal Information Form at 12; Lee Ann Tomasetti Principal Information Form at 12. The failure of the principals to provide truthful and non-misleading information to the Commission about their ties to a convicted felon and a publicly identified associate of organized crime is evidence that the Applicant lacks good character, honesty and integrity. The Applicant did not dispute this point, leaving this ground uncontested. Based on this independently sufficient ground, this application is denied.

3. The Applicant Failed to Disclose to the Commission that Ralph Balsamo is a Soldier in the Genovese Organized Crime Family.

In response to Question 28 of the Principal Information Forms submitted to the Commission, Joseph Balsamo and Lee Ann Tomasetti each acknowledged that Ralph Balsamo is a convicted felon while ignoring his status as a publicly identified member of the Genovese organized crime family. Question 28 of the Principal Information Form submitted by Joseph Balsamo and Lee Ann Tomasetti asks: "Do you know or have you ever knowingly been associated with, socially or professionally, any person known by you to be convicted of a felony or having ties with organized crime?" Joseph Balsamo and Lee Ann Tomasetti both answered, "on or about September 28, 2007, Ralph Balsamo pled guilty to violations of 18 USC 1963 (Racketeering) in the Southern District of New York under indictment #06CR008(LAK) and [sic] sentenced to 97 months incarceration. About the same time, he pled guilty to state charges in Supreme Court, New York County, and was sentenced to 7 ½ concurrent. Ralph Balsamo is the brother of member Joseph Balsamo and brother-in-law of member Lee Ann Tomasetti." See Joseph Balsamo Principal Information Form at 12; Lee Ann Tomasetti Principal Information Form at 12. Joseph Balsamo and Lee Ann Tomasetti failed to disclose that Ralph Balsamo has been publicly identified as a member of organized crime. The failure of the Applicant's disclosed principals to provide truthful and non-misleading information to the Commission by acknowledging that Ralph Balsamo has been publicly identified as a member of organized crime is evidence that the Applicant lacks good character, honesty and integrity. The Applicant did not dispute this point, leaving this ground uncontested. Accordingly, the Commission denies the Applicant's registration application on this independently sufficient ground.

B. John Caggiano, a Principal of the Applicant, Has Been Publicly Identified By Law Enforcement as an Associate of the Genovese Organized Crime Family, and Has Associated With Other Organized Crime Figures and Convicted Racketeers.

The Commission is expressly authorized to deny a registration application based on "association with a person who has been convicted of a racketeering activity when the applicant

knew or should have known of such activity..." See Admin. Code §22-259(b) (iv). Similarly, the Commission is expressly authorized to deny a registration application based on "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 for registration... knew or should have known of the organized crime associations of such person." See Admin. Code §22-259(b) (v). As set forth in Section I above, Caggiano, a principal of Dutchie, has been publicly identified by law enforcement as an associate of the Genovese organized crime family.[10] In addition to Caggiano being named as a Genovese organized crime family associate, Caggiano committed crimes with other organized crime figures. As the "lieutenant" or second-in-command of a criminal enterprise that involved a member and several associates of the Genovese organized crime family, Caggiano obviously either "knew or should have known" of his own organized crime connections. In addition, Caggiano knew or should have known of his associations with individuals who have been convicted of racketeering activities. Indeed, Caggiano himself was convicted of committing a racketeering activity.

First, as discussed above, Caggiano committed numerous crimes with Ralph Balsamo, a soldier in the Genovese organized crime family, and a convicted racketeer. See Caggiano Indictment; November 9, 2006 Press Release. Ralph Balsamo, who has been described by the federal government as a person who "wields significant authority, control, and influence over the activities of the Genovese organized crime family," is the brother of disclosed principal, Joseph Balsamo.[11] See Balsamo Memorandum at 6. One of the ways that Ralph Balsamo played a central role in the operation of the Genovese organized crime family was by carrying messages for other high-ranking members of the crime family who were imprisoned or were facing pending charges, such as Liborio S. Bellomo, Dominick Cirillo, and Ernie Muscarella.[12] The federal government asserted that Ralph Balsamo and his brother-in-law, Salvatore Larca, who is also a Genovese organized crime family soldier and a convicted racketeer, were frequently together with Caggiano, and that "it is clear" that Ralph Balsamo and Larca were able, through Caggiano, to communicate with Cirillo in prison. See Memorandum of Law at 8-9.

These types of associations are plainly repugnant to Local Law 28's goal of eliminating the influence of organized crime from the industry. Besides the public identification of Caggiano as an associate of the Genovese organized crime family, Caggiano's associations with other Genovese organized crime family figures and convicted racketeers demonstrate that the Applicant lacks the good character, honesty, and integrity required to obtain a registration. The Applicant did not dispute this point, leaving this ground uncontested. Based on this independently sufficient ground, this application is denied.

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[10] In addition, Caggiano's father-in-law, Dominick Cirillo, was publicly identified as a former acting boss of the Genovese organized crime family.

[11] The Genovese organized crime family is one of the oldest and most entrenched of the traditional Organized Crime Families operating in the New York area. See United States v. Salerno et al., 794 F. 2d 64, 71 (2d Cir. 1986), rev'd on other grounds, 481 U.S. 739 (1987); United States v. Bellomo, 944 F. Supp. 1160, 1166 (S.D.N.Y. 1996). For decades, the Genovese Family has committed numerous acts of violence, including murders and attempted murders, in order to protect its interests and to protect its members and associates from prosecution. In addition to murders, the Genovese Family has historically engaged in a wide range of other criminal activity, including violent extortions of businesses, witness-tampering, loansharking, receipt of stolen property, and illegal gambling. The Genovese Family's pattern of crime is well-established and long-standing. See Balsamo Memorandum.

[12] Liborio "Barney" Bellomo, Dominick "Quiet Dom" Cirillo, and Ernie Muscarella were each, for a time, the acting boss of the Genovese organized crime family.

C. The Applicant Failed to Provide Truthful Information to the Commission In Connection to the Application By Refusing to Cooperate With the Commission.

The Commission may refuse to issue a registration to an applicant who has failed "to provide truthful information in connection with the application." See Admin. Code §22-259(b)(i). The Commission attempted to depose Joseph Balsamo in connection with the application. However, Joseph Balsamo refused to cooperate with the Commission's investigation and, after he delayed his deposition, he ultimately failed to appear for his deposition.

On April 21, 2011, the Commission directed Joseph Balsamo to appear for a deposition on April 29, 2011. See April 21, 2011 Letter from David Mandell to Joseph Balsamo. One day before the scheduled deposition, on April 28, 2011, the Commission's staff received a telephone call from the applicant's attorney, Paul Gentile ("Gentile"), who also represented C&S in its action against the Commission. Gentile advised the Commission staff member that he (Gentile) had a prior engagement and would, therefore, not be able to produce Joseph Balsamo for his deposition until May 24, 2011. Consequently, the Commission's staff agreed to postpone Joseph Balsamo's deposition until May 24, 2011. See May 4, 2011 letter from David Mandell to Paul T. Gentile, Esq. On the afternoon of May 23, 2011, less than one day before the rescheduled deposition, the Commission received a letter from Gentile via facsimile. In the letter, Gentile stated, "I have been advised by my client that [Dutchie] no longer conducts business as a wholesaler.[13] As such the application is withdrawn and the scheduled deposition of Joseph Balsamo is cancelled." See May 23, 2011 letter from Paul Gentile to David Mandell. In response, by letter dated May 24, 2011, the Commission advised Gentile that it "declines to accept [Dutchie's] withdrawal request and plans to issue a decision on [Dutchie's] application after the staff's investigation is completed. Joseph Balsamo's deposition, which was initially scheduled to take place on April 29, 2011, and was adjourned to May 24, 2011 at your request, is rescheduled for Thursday, June 2, 2011... If Mr. Balsamo fails to appear for the deposition, the Commission will consider his refusal to provide information in its decision on the application." See May 24, 2011 letter from David Mandell to Paul T. Gentile, Esq. By Letter dated May 25, 2011, Gentile responded by stating that "Mr. Balsamo does not have the time and resources to waste attending a meaningless deposition. If the Commission wants to 'spin wheels' it will have to do so on its own..." See letter from Paul Gentile, Esq. to David Mandell. Joseph Balsamo did not appear for his deposition on June 2, 2011

The Commission need not attribute a motive to this failure to appear. It is likely, however, that Joseph Balsamo failed to appear because he did not want to answer questions under oath about, among other things, (a) his brother Ralph Balsamo's membership in the Genovese organized crime family; (b) the crimes committed by Ralph Balsamo in the Hunts

[13] Subsequent observations at the Applicant's place of business by the Commission's staff confirm that the Applicant continues to operate as a wholesaler in the adjacent area to the New York City Terminal Produce Cooperative Market. See Affidavit by Lieutenant Thomas O'Brien. Nevertheless, as early as January 4, 2011, Caggiano admitted to his parole officer that the Applicant "may change over [its] name to [a] new business... [Caggiano] stated that [the business] will retain [the] same location. See January 4, 2011 New York State Parole Contact Comment. This demonstrates, in part, why the Commission should not entertain the Applicant's request to withdraw its application that was made in anticipation of the denial of the instant application.

Point Market; (c) Caggiano's role as an undisclosed principal of the Applicant; (d) Caggiano's public identification as an associate of the Genovese organized crime family; (e) the crimes committed by Caggiano in the Hunts Point Market; and (f) mob business that appears to have been conducted in a funeral home that he owned and managed.

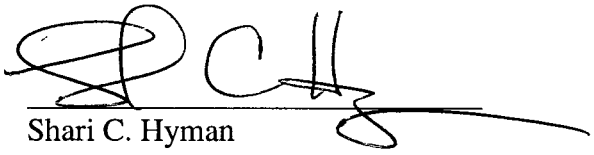
Notwithstanding the reason for Joseph Balsamo's failure to appear for a deposition, the Commission may refuse to grant a registration if an applicant fails to provide truthful information in connection with the application. The Applicant was advised that Joseph Balsamo's refusal to appear for a deposition could be considered as a ground upon which to deny its application. The Applicant did not dispute this point. Thus, the refusal of Joseph Balsamo to provide sworn testimony in connection with the application of Dutchie Enterprises LLC, d/b/a ADJ Wholesale Produce constitutes an independent basis on which the Commission denies this application.

III. CONCLUSION

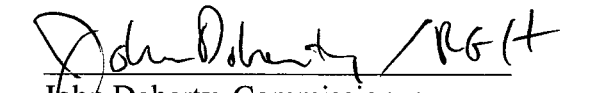
Based on each of the independently sufficient reasons stated above, the Commission finds that Dutchie lacks good character, honesty and integrity and denies the application of Dutchie for a registration as a wholesale business in the adjacent area at the New York City Terminal Produce Cooperative Market.

Dated: February 7, 2012

THE BUSINESS INTEGRITY COMMISSION



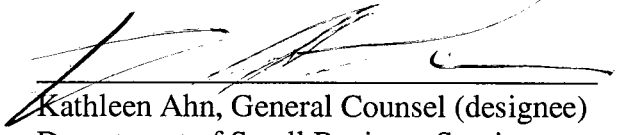
Shari C. Hyman
Commissioner and Chair



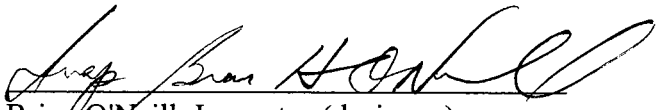
John Doherty, Commissioner
Department of Sanitation by proxy

Janet Lim, Assistant General Counsel (designee)
Department of Consumer Affairs

Rose Gill Hearn, Commissioner
Department of Investigation



Kathleen Ahn, General Counsel (designee)
Department of Small Business Services



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