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 RENEWAL APPLICATION OF NIGHT HAWK ENTERPRISES, INC. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

Night Hawk Enterprises, Inc. (the "Applicant" or "Night Hawk") 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 renewal of its 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.

Night Hawk applied to the Commission for renewal of 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); 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); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008). 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 renewal 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 trade waste exemption from licensing and a trade waste registration.

   1. Anthony Licata, an undisclosed principal of the Applicant, has been convicted of extortion conspiracy.

   2. Anthony Licata, an undisclosed principal of the Applicant, has committed racketeering activities.

   3. Anthony Licata, an undisclosed principal of the Applicant, is a soldier in the Gambino organized crime family and knowingly associated with members and associates of organized crime.

B. The Applicant knowingly failed to provide information and provided false and misleading information to the Commission in its Registration Application and Renewal Application.

   1. The Applicant failed to disclose a principal of the Applicant in its Registration Application and Renewal Application.

   2. The Applicant failed to disclose its association with Anthony Licata, a soldier in the Gambino organized crime family.

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. DISCUSSION

On or about May 31, 2005, Night Hawk applied to the Commission for an exemption from the licensing requirement for the removal of construction and demolition debris. See Night Hawk's Application for Exemption from Licensing Requirement for Removal of Demolition Debris ("Registration Application"). The Applicant disclosed Fran Gaudio ("Gaudio") as its sole

principal. See id. at 9.[1] On or about September 1, 2005, the Commission granted the Applicant a trade waste registration. See Night Hawk Registration Order. On September 6, 2005, Gaudio signed a Registration Order, thereby consenting to the terms and conditions therein. See Registration Order at 6. Night Hawk's registration was effective for two years, and expired on August 31, 2007. See id. On August 6, 2007, the Applicant filed an application to renew its registration with the Commission. See Night Hawk's Renewal Application for License or Registration as a Trade Waste Business ("Renewal Application"). Gaudio was again disclosed as the sole principal of the Applicant. See id. at 6. Gaudio certified that the information contained in the Registration Application and the Renewal Application was accurate and truthful. See Registration Application at 22; Renewal Application at 10.

On February 7, 2008, Anthony Licata, ("Licata"), an undisclosed principal of the Applicant, along with numerous members and associates of the Gambino organized crime family, was indicted by a federal grand jury in the Eastern District of New York. See Press Release, February 7, 2008, United States Attorney, Eastern District of New York ("Press Release"); United States v. Agate, et al, Cr. 08-76 ("Indictment"). The defendants were charged in an eighty-count indictment with crimes including racketeering conspiracy, extortion, mail fraud, bribery, and murder. Licata is identified in the Indictment as a soldier in the Gambino organized crime family. See Indictment at 9; Memorandum of Law in Support of the Government's Motion for Permanent Orders of Detention ("Detention Memo") at 163.

The Indictment alleged that Licata, also known as "Cheeks," "Anthony Firehawk," "Anthony Nighthawk," "Nighthawk," and "Firehawk," controlled various companies, including Night Hawk Enterprises, Inc. See Indictment at 10. Accordingly, based on the Indictment, the Commission found that there had likely been false or fraudulent information submitted in Night Hawk's Renewal Application. See Night Hawk Emergency Suspension Order, dated February 7, 2008 ("Emergency Suspension Order"); Admin. Code §16-514 (Emergency Suspension of License or Registration.). Specifically, the Commission found that Gaudio falsely certified that she alone controlled the Applicant and that she had not knowingly associated in any manner with any member or associate of organized crime.[2] See Emergency Suspension Order at 1-2. Therefore, on February 7, 2008, the Commission issued an immediate suspension of the Applicant's Registration. See id. The Applicant was advised that it had until February 11, 2008 to appeal the suspension to the Chair of the Commission. The Applicant, through its attorney, requested an extension of the deadline to appeal such suspension. The Commission granted the request, and extended the deadline to appeal to 5:00 p.m. on February 14, 2008. By certified letter dated February 14, 2008, the Applicant asserted that it would not appeal the suspension. See Letter dated February 14, 2008 from Horace Flowers, Esq. ("Flowers Letter").

The Commission's staff has conducted a background investigation of the Applicant and its principal. On March 11, 2009, the staff issued a fourteen-page recommendation that the Renewal Application be denied (the "Recommendation"). On May 11, 2009, the Commission sent the Recommendation to the Applicant's business address, which is also Gaudio's home address, by regular mail. See Registration Application at 1; Renewal Application at 1, 6; Certificate of Mailing. Additionally, on the same date, the Commission sent the

[1] Gaudio's maiden name is Licata.

[2] See infra at 12-14 for a discussion of the false and misleading information the Applicant provided to the Commission.

Recommendation to the Applicant's attorney, by facsimile. See facsimile receipt dated March 11, 2009. Pursuant to the Commission's rules, the Applicant had ten business days to submit a response to the Recommendation. See 17 RCNY §2-08(a); see also Recommendation at 14. 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, Night Hawk's Renewal Application is denied.

A. The Applicant has failed to demonstrate eligibility for a trade waste exemption from licensing and a trade waste registration.

1. Anthony Licata, an undisclosed principal of the Applicant, has been convicted of extortion conspiracy.

The Commission may deny a registration application for the commission of crimes, which in light of the factors set forth section 753 of the Correction Law would provide a basis under that statute for refusing to issue a license. See Admin Code §§16-501(a), 16-509(a)(iii); supra at 5-7. As discussed above and *infra* at 12-14, Anthony Licata is an undisclosed principal of the Applicant. As such, Licata was charged with the commission of numerous crimes, including extortion conspiracy, a crime to which he pled guilty. Therefore, the Applicant's Registration Application is denied on this independently sufficient ground.

The Indictment charged that on or about and between January 2006 and December 2006, Licata, together with others, embezzled and stole from the employee benefit plans of the International Brotherhood of Teamsters Local 282 Health and Welfare Benefit Fund and the International Brotherhood of Teamsters Local 282 Pension Fund and funds connected with such employee benefit plans ("Local 282 Funds").[3] See Indictment at 64; Title 18 United States Code ("USC") §664.

Further, on or about January 2006 through January 2008, Licata is alleged to have defrauded the Local 282 Funds by submitting and causing to be submitted false information regarding hours worked by employees who were covered by labor contracts with Local 282. Id. at 64-65. Licata and his co-conspirators falsely claimed that certain hours had been worked by such employees who had, in fact, worked more hours thereby underreporting and underpaying contributions to the Local 282 Funds, which were owed to the funds and required by federal law to be made on behalf of the employees. Id. In furtherance of this scheme, Licata and others mailed false remittances and checks payable to the Local 282 Funds, thereby committing mail fraud, in violation of 18 USC §1341. Id.

According to the Indictment, Licata participated in similar activity on or about and between January 2007 and December 2007 and on or about and between January 2006 and January 2008. See Indictment at 89-91, 140-141. In furtherance of the latter conspiracy, on or

[3] International Brotherhood of Teamsters Local 282 provides union representation and fund benefits to workers in various industries including truck drivers who haul construction and demolition debris.

about March 20, 2007, Licata caused the Applicant to submit by mail a renewal application for license or registration as a trade waste business to the Commission. Id. at 141. Additionally, on or about December 3, 2007 and January 28, 2008, Licata caused Aragon Enterprises, Inc., another company allegedly controlled by Licata, to submit false information by mail to the Local 282 Funds regarding hours worked by employees covered by labor contracts with Local 282. Id. at 10, 141.

Licata was charged with three additional counts of theft of union benefits, mail fraud conspiracy, and mail fraud related to activities that took place on or about and between February 2006 and January 2008. See id. at 142-45. He was also charged with making false statements and concealing facts, the disclosure of which was necessary to verify and explain certain Internal Revenue Forms filed by the Local 282 Funds and which are filed with the Secretary of Labor. Id. at 145-46.

The Indictment also charged that on or about and between January 1, 2006 and March 17, 2006, Licata committed the crimes of extortion conspiracy, extortionate extension of credit, and extortionate extension of credit with Gino Cracolici ("Cracolici"), William Scotto ("Scotto"), and others. See id. at 72-73; 136-38. Cracolici and Scotto were identified by the United States Attorney, Eastern District of New York, as a Gambino associate and Gambino soldier, respectively. Detention Memo at 161, 163. Licata, Cracolici, and Scotto also attempted to extort property from a John Doe #4, using threats of force and violence, to obtain his consent through fear. Indictment at 136-38. According to a cooperating witness, Cracolici asserted that John Doe #4 owed Cracolici $70,000 in connection with a certain trucking business. Id.; Detention Memo at 163-64. Cracolici went to Licata and Scotto, also known as "Billy" and "Big Billy," to force John Doe #4 to pay the money. Indictment at 136-38; Detention Memo at 163-64.

On May 30, 2008, Licata pled guilty to count 42 of a Superseding Indictment, extortion conspiracy, in violation of 18 USC §1951(a). See Criminal Cause for Pleading; Superseding Indictment, United States v. Agate, et al, Cr. 08-76 ("Superseding Indictment") at 136-137. In pleading guilty, Licata admitted that on or about and between January 1, 2006 and March 17, 2006, Licata, Cracolici, and others did

> knowingly conspire to obstruct, delay and affect commerce and the movement of articles and commodities in commerce, by extortion, in that the defendants and others agreed to obtain property, to wit: money, from John Doe #4, with the consent of John Doe #4, which consent was to be induced through wrongful use of actual and threatened force, violence and fear.

See Superseding Indictment at 136-137.

On August 28, 2008, Licata was sentenced to a term of fifteen months imprisonment and three years supervised release. He was also ordered to pay a fine of $6,000. See Judgment in a Criminal Case.

The Commission is expressly authorized to consider the commission of crimes by the Applicant or any of its principals which, in light of the factors set forth in section 753 of the Correction Law, would provide a basis under that statute for refusing to issue a license. See Admin Code §§16-509(a)(iii), 16-501(a); supra at 5-7. Those factors are:

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

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

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

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

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

(f) The seriousness of the offense or offenses.

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

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

N.Y. Correct. Law §753 (1).

Applying these factors, the crimes charged against Licata and those to which he pled guilty are so serious, and so closely related to both the purposes for which registration is sought and the duties and responsibilities associated with such registration, that they should preclude the grant of a trade waste removal registration to this Applicant. Moreover, the charges against Licata are antithetical to the very purpose of Local Law 42, which is to root out organized crime and other corruption out of the carting industry. The crimes charged relate directly to the construction industry, the industry in which the Applicant is seeking to operate, and go to the crux of the Applicant's honesty, integrity and character. As charged, during his approximately two year participation in the criminal schemes commencing in 2006, Licata was in his late 30's – plainly old enough to know what the law required, how to obey it, and to recognize that the schemes in which he was involved were illegal. Further, Licata's crimes, as charged and those to which he pled, were the result of a series of conscious decisions to violate the law and are a disturbing reminder of the cynical disregard for the law that corrupted the City's waste removal industry in the past. The Applicant is simply unworthy of registration in that same industry. Moreover, given the history of this industry, the public has a compelling interest in ensuring that waste hauling services in the City are provided free of the threat of organized crime and corruption. Registration of this Applicant is incompatible with that important objective. The charges against Licata provide substantial evidence that both Licata and the Applicant lack good

character, honesty, and integrity. Notably, the Applicant does not refute this point. Accordingly, the Commission denies Night Hawk's application on this independently sufficient ground.

2. Anthony Licata, an undisclosed principal of the Applicant, has committed racketeering activities.

Admin. Code §16-509(a)(v) allows the Commission to consider "the Commission of a racketeering activity..." in refusing to issue a license to an applicant. See Admin. Code §16-509(a)(v). Similarly, the Commission may consider such factor in determining the applicant's eligibility for a registration. See supra at 5-7. As discussed above, as charged in the Indictment, and evidenced by Licata's admission of guilt, the Commission finds that Licata, an undisclosed principal of the Applicant, committed numerous racketeering activities.[4]

The violations of the United States Code that Licata was charged with violating, including racketeering conspiracy, extortion, mail fraud, and theft of union benefits, are racketeering activities as defined by 18 USC §1961(1). Moreover, the crime to which Licata pled guilty, extortion conspiracy, is a racketeering activity. See 18 USC §§1951, 1961(1). Section 16-509(a)(v) of the Administrative Code provides that the Commission may deny an application based on the commission of a racketeering activity, including those delineated in 18 USC §1961(1). Licata's commission of racketeering activities in connection with a trucking business directly relates to the trade waste industry and is a sufficient ground upon which to deny the Applicant's application. See Admin. Code §16-509(a)(v). The Applicant does not content this point. Accordingly, the Commission denies Night Hawk's Renewal Application on this independently sufficient ground.

3. Anthony Licata, an undisclosed principal of the Applicant, is a soldier in the Gambino organized crime family and knowingly associated with members and associates of organized crime.

The Commission is expressly authorized to deny the license application of a carting company whose principals have had business dealings with known organized crime figures. See Admin. Code §16-509(a)(vi); SRI, 107 F.3d at 998. The Commission may consider this factor in determining an applicant's eligibility for an exemption from licensing and a trade waste registration. See supra at 5-7. Here, not only did Gaudio and Licata associate with organized crime members and associates, but Licata, an undisclosed principal of the Applicant, is himself a member of the Gambino crime family.

On February 7, 2008, the United States Attorney for the Eastern District of New York, named Licata as a soldier in the Gambino organized crime family. See Indictment at 9; Detention Memo at 163. As a Gambino soldier, Licata and others furthered the criminal enterprise of the Gambino crime family through numerous criminal activities including racketeering, extortion, loan sharking, bribery, and robbery. See Indictment at 4-11. Further, as charged in the Indictment, from approximately 2006 through 2008, Licata conspired with others in an effort to defraud the Local 282 Funds of union benefits. Licata acted with Cracolici, a

[4] By engaging in this criminal activity, the Applicant also violated the terms of its Registration Order, which states that the "Applicant shall not violate any law of the United States of America or the State of New York...." See Registration Order at 3.

Gambino associate, and Scotto, a Gambino soldier, in committing the crimes of extortion conspiracy, a crime to which Licata pled guilty, attempted extortion, and extortionate extension of credit. See Indictment at 72-73, 136-38; Superseding Indictment at 136-37; Detention Memo at 163-64.

Prior to the Indictment, Scotto had pled guilty to racketeering with predicate acts of extortion dating back to 1995 in an unrelated case. On February 4, 2008, three days before the unsealing of the Indictment, Scotto was sentenced to 33 months imprisonment. See Detention Memo at 161, 164. There is more than enough evidence from which to reasonably infer that Licata knew the organized crime status of his co-conspirators, both of whom were in the same crime family as Licata.

The proof also supports the conclusion that Gaudio, the sole disclosed principal of the Applicant, knowingly associated with an organized crime figure. The Indictment charged that Licata engaged in numerous criminal activities from 2006 through 2008, including defrauding union funds and extortion, crimes commonly associated with organized crime. Moreover, as alleged in the Indictment, Licata controlled the Applicant business and caused the Applicant to submit the Renewal Application to the Commission. In light of Licata's control over the Applicant and the type of criminal behavior in which Licata engaged, it strains credulity to suppose Gaudio was ignorant of Licata's organized crime status and associations.

The evidence recounted above demonstrates that the Applicant's undisclosed principal is an organized crime figure, engaged in business dealings over a period of years with other organized crime figures, and engaged in criminal activity with these individuals. Further, the proof also shows that the Applicant's disclosed principal knew or should have known of Licata's organized crime ties. Moreover, the Applicant does not refute this point. These types of associations are plainly repugnant to Local Law 42's central goal of eliminating the influence of organized crime from the industry. Both Licata's own organized crime status as well as his associations with other organized crime members and associates demonstrate that the Applicant lacks the good character, honesty, and integrity required to obtain a registration.[5] Accordingly, Night Hawk's application is denied on this independent ground.

B. The Applicant knowingly failed to provide information and provided false and misleading information to the Commission in its Registration Application and Renewal 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 §16-509(a), (b); Attonito, 3 A.D.3d 415. See also Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008). On May 31, 2005 and August 6, 2007, Gaudio filed the Applicant's Registration Application and Renewal Application, respectively, with the Commission. In both the Registration Application and the Renewal Application, Gaudio provided false and misleading information to the Commission.

[5] The Applicant also violated its Registration Order, which prohibits the Applicant from "knowingly associat[ing] with any member or associate of organized crime or any racketeer in any manner." See Registration Order at 3.

As stated above, the Indictment alleged that Anthony Licata controlled and operated the Applicant. Gaudio certified in the Applicant's Registration Application and Renewal Application that she was the sole principal of the Applicant and that neither the Applicant nor Gaudio had knowingly associated with any member or associate of organized crime. Based on these false submissions, the Commission issued an immediate emergency suspension of Night Hawk's registration based on its finding that the Applicant had likely submitted false information to the Commission. See Emergency Suspension Order at 1-2. The Applicant did not contest this finding or the suspension.

1. The Applicant failed to disclose a principal of the Applicant in its Registration Application and Renewal Application.

Question 6 of the Registration Application directs, "On Schedule A, identify all individuals who are or have been principals of [the] applicant business at any point during the past ten years." See Registration Application at 3-4. Similarly, Schedule A of the Renewal Application asks the Applicant to "identify all persons who are principals of the licensee or registrant, including but not limited to directors, officers, and stockholders." See Renewal Application at 6. In both applications, the Applicant disclosed one principal on Schedule A – Fran Gaudio. Id.; Registration Application at 9.

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 §16-501(d) (italics added).

The Indictment alleged that at various times relevant to the Indictment, Licata controlled Night Hawk and other companies.[6] Further, the Indictment charged that on or about March 20, 2007, Licata caused Night Hawk to submit its Renewal Application. See Indictment at 141.

While the Commission is not required to attribute a motive for an applicant's false filing, it is reasonable to conclude that Gaudio was unwilling to disclose Licata's true role in the Applicant company due to his business dealings with organized crime figures and convicted racketeers, his criminal behavior related to the Applicant and other businesses, as well as the fact that he is a soldier in the Gambino organized crime family. Notably, the Applicant did not contest the Commission's findings as delineated in its Emergency Suspension Order that the Applicant provided false or fraudulent information in Night Hawk's Renewal Application when it certified that its sole principal was Gaudio. See Emergency Suspension Order; Flowers Letter.

The evidence before the Commission, which includes the facts alleged in the Indictment and the failure of Night Hawk to refute the allegations as delineated in the Commission's Emergency Suspension Order or in response to the Recommendation, establish that Licata has in fact operated the Applicant. As Licata is a person who participated directly or indirectly in the control of the Applicant, he is a principal, and as such was not disclosed to the Commission in either the Registration Application or Renewal Application. Therefore, the Applicant's Renewal Application is denied on this independently sufficient ground.

[6] Another company that Licata controls and operates is Firehawk Enterprises, Inc. Its Commission-issued registration to operate a trade waste business is currently suspended.

2. The Applicant failed to disclose its association with Anthony Licata, a soldier in the Gambino organized crime family.

Question 10 of the Renewal Application asks if the applicant business or its principal has "knowingly associated in any manner with any member or associate of organized crime?" The Applicant responded, "no." See Renewal Application at 5. On July 16, 2007, Gaudio, the sole disclosed principal of the Applicant, certified that the information contained in the Renewal Application was true and accurate. See id. at 10.

As discussed above, as charged in the Indictment and demonstrated by Licata's plea of guilt, between January 2006 and January 2008, Licata, a soldier in the Gambino crime family, controlled and operated Night Hawk. Additionally, on or about March 20, 2007, Licata caused the Applicant to submit its Renewal Application. See Indictment at 141. Moreover, the Applicant did not refute the Commission's findings on February 7, 2008, that the Applicant falsely represented to the Commission that it had not associated with any member or associate of organized crime. See Emergency Suspension Order; Flowers Letter.

In light of Licata's continuous and long-term criminal activity with respect to the Applicant and other businesses as well as his organized crime ties, Gaudio clearly knew or should have known that she and the Applicant business had associated with members and/or associates of organized crime. Indeed, a member of the Gambino crime family – a soldier – was operating the company from behind the scenes for years. Licata, who was well aware of his associations and organized crime status, was also aware that Gaudio submitted false information to the Commission in an attempt to hide Licata's role in the company and his organized crime status. Thus, the Applicant provided false and misleading information to the Commission in Night Hawk's Renewal Application.

The failure of the Applicant to provide truthful and non-misleading information to the Commission, a point not refuted by the Applicant, is evidence that the Applicant lacks good character, honesty and integrity. The Commission, therefore, denies Night Hawk's application on this independently sufficient ground. See Admin. Code §§16-509(b), 16-509(a)(i).

III. 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 Night Hawk falls short of that standard. For the reasons discussed above, the Commission hereby denies the Renewal Application of Night Hawk Enterprises, Inc.

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.

Dated: April 14, 2009

THE BUSINESS INTEGRITY COMMISSION

Michael J. Mansfield
Chairman

John Doherty, Commissioner
Department of Sanitation

Inspector General Jayme Naberezny (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