NEW YORK CITY BUSINESS INTEGRITY COMMISSION
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In the matter of:

ISABELLA CITY CARTING CORP.
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BACKGROUND AND STATUTORY FRAMEWORK

Every commercial business establishment in New York City must contract with a private carting company to remove and dispose of the waste it generates. Historically, the private carting industry in the City was operated as a cartel controlled by organized crime. As evidenced by numerous criminal prosecutions, the industry was plagued by pervasive racketeering, anticompetitive practices and other corruption. See, e.g., United States v. International Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993); People v. Ass'n of Trade Waste Removers of Greater New York Inc., et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); United States v. Mario Gigante et al., No. 96 Cr. 466 (S.D.N.Y.); People v. GNYTW, 701 N.Y.S.2d 12 (1st Dep't 1999).

The Commission is charged with, *inter alia*, combating the pervasive influence of organized crime and preventing its return to the City's private carting industry, including the construction and demolition debris removal industry. Instrumental to this core mission is the licensing scheme set forth in Local Law 42, which created the Commission and granted it the power and duty to license and regulate the trade waste removal industry in New York City. Admin. Code §16-505(a). It is this licensing scheme that continues to be the primary means of ensuring that an industry historically plagued with corruption remains free from organized crime and other criminality, and that commercial businesses that use private carters can be ensured of a fair, competitive market.

Local Law 42 provides that "[i]t shall be unlawful for any person to operate a business for the purpose of the collection of trade waste . . . without having first obtained a license therefore from the [C]ommission." Admin. Code §16-505(a). Before issuing such license, the Commission must evaluate the "good character, honesty and integrity of the applicant." Id. at §16-508(b). The New York City Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making a licensing decision:

> 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 therefore, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Id. at § 509(a)(i)-(x). Additionally, the Commission may refuse to issue a license or registration to any applicant who has "knowingly failed to provide information or documentation required by the Commission...or who has otherwise failed to demonstrate eligibility for a license." Id. at § 509(b). The Commission may refuse to issue a license or registration to an applicant when such applicant was previously issued a license which was revoked or not renewed, or where the applicant "has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license." Id. at § 509(c). Finally, the Commission may refuse to issue a license or registration to any applicant where the applicant or its principals have previously had their license or registration revoked. Id. at § 509(d).

An applicant for a trade waste license or registration has no entitlement to and no property interest in a license or registration and the Commission is vested with broad discretion to grant or deny a license or registration application. Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 995 (2d Cir. 1997); 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). Admin. Code § 16-116.

PROCEDURAL HISTORY

Following an investigation conducted by the Business Integrity Commission (Commission), on or about July 16, 2013, the Staff of the Commission (Petitioner) served upon Isabella City Carting Corp., BIC License No. 150, (Respondent) a Notice to the Licensee of Grounds to Recommend the Revocation of the License of Isabella City Carting Corp. to Operate as a Trade Waste Business (Notice).

Pursuant to the grounds set forth in the Notice, on September 23, 2013 a hearing commenced at the offices of the Business Integrity Commission, 100 Church Street, before the members of the Commission – Shari C. Hyman (Hyman), Commissioner and Chair, John Doherty of the Department of Sanitation, Rose Gill Hearn of the Department of Investigation, John Denesopolis of the Police Department, David Friedman of the Department of Consumer Affairs and Kathleen Ahn of the Department of Small Business Services – to determine whether to revoke the Respondent's License.

Appearing on behalf of Petitioner was Leigh Neren, Director of Licensing and Senior Special Counsel and Abigail Goldenberg, General Counsel. John Isabella (John) and Rosemarie Isabella (Rosemarie), principals of Respondent, were present and represented by Claude Millman (Millman) and Caroline Rule, attorneys at Kostelanetz & Fink, LLP.

On the first day of the hearing, Commissioner Hyman opened the proceedings and stated the grounds for jurisdiction and the rules of the proceeding. Ms. Neren opened the Petitioner's case and Mr. Millman presented the Respondent's opening. Petitioner put on their sole witness, Investigator Christian Santos (Investigator Santos). Petitioner rested and the hearing was then adjourned to September 25, 2013.

On September 25, 2013, Respondent began its case. Mr. Millman presented Mr. Ashley Yates, an employee of Respondent and Dr. James Hicks (Dr. Hicks), a board-certified psychiatrist. After a voir dire of Dr. Hicks, Mr. Millman began Respondent's direct examination of Dr. Hicks. The proceedings were then adjourned until October 2, 2013.

On October 2, 2013, Dr. Hicks' testimony was adjourned to October 4 due to a scheduling conflict and Respondent proceeded with additional witnesses. Mr. Daniel Scaglione (Scaglione), a customer of Respondent, Mr. Marvin Edmonds, an employee of Respondent and Mr. Rischard Edwards, also an employee of Respondent all testified. After the conclusion of all three witnesses' testimony, the hearing was adjourned to October 4, 2013.

On October 4, 2013, Dr. Hicks retook the stand and completed his testimony. John began his testimony and the hearing was then adjourned to October 15, 2013.

On October 15, 2013, John resumed and continued his testimony. The hearing was then adjourned to October 21, 2013.

On October 21, 2013, the Respondent presented Silvio Martone, a customer of Respondent, and then John concluded his testimony. The hearing was then adjourned to October 29, 2013.

On October 29, 2013, both Respondent and Petitioner presented closing arguments and the Commission members reserved decision. Based on consideration of the evidence presented over the course of the hearing, the following constitutes the decision and order of the Commission.

ANALYSIS

I. Respondent Violated the Terms of its Licensing Order by Employing and Retaining the Services of Constantino Isabella

For the following reasons, the Commission finds that Petitioner's allegation that Respondent violated the terms of its Licensing Order, by employing and retaining the services of Constantino Isabella (Constantino), a person who consented to not be involved in the carting industry,[1] is supported by the evidence.

The underlying facts of this allegation have never been at issue during this proceeding. Respondent was a member of the Association of Trade Waste Removers of Greater New York (GNYTW) until the enactment of Local Law 42 in June 1996 made such membership grounds for denying licensure (Pet. Ex. 4, at 14). See §16-520(j). Constantino also sat on the board of the GNYTW from 1989 to 1993. On October 21, 1997, the GNYTW was convicted of enterprise corruption and other criminal charges for conduct that occurred during Constantino's tenure on its board. A jury found the GNYTW served as organized crime's primary enforcer of the anti-competitive waste carting cartel's illegal schemes (Pet. Ex. 4 at 6). Significantly, this illegal conduct included enforcement by GNYTW board members, such as Constantino, of the property rights system (Pet. Ex. 4 at 9). Therefore, the Trade Waste Commission found Constantino culpable of enforcement of the property rights system as a GNYTW board member (Pet. Ex. 4 at 10).

Moreover, after the implementation of Local Law 42, Respondent applied for a waiver of the law's statutory provision rendering all carting contracts in the City of New York terminable upon thirty day's notice. The Trade Waste Commission denied Respondent's waiver applications on January 31, 1997 (Pet. Ex. 3) and again on December 5, 1997 (Pet. Ex. 4) (collectively Waiver Denials). These Waiver Denials provide a detailed analysis of Respondent's business transactions prior to establishment of Local Law 42 and the reasons behind Constantino's subsequent exclusion from the trade waste industry in New York City.

The Waiver Denials found Respondent engaged in abusive contracting practices as its standard contract featured an evergreen clause,[2] an onerous liquidated damages clause,[3] pricing that contained only the maximum permissible

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[1] See Pet. Ex. 5

[2] An evergreen clause is a contract provision which provides for automatic renewal of the contract without any notice to or action by the customer (Pet. Ex. 3). As stated in the Waiver Denials, Local Law 42 was enacted to combat such dubious contact language where customers are compelled to enter long-term contracts with onerous terms (Pet. Ex. 3).

[3] In the Respondent's contracts, upon breach of the agreement by the customer, they were forced to pay 65% of the aggregate periodic service charge then in effect, multiplied by the number of months or weeks remaining in the contract at the time of the breach (Pet. Ex. 3). The Trade Waste

rates under law and only illusory obligations to the customer on the part of the carter.[4] (Pet. Ex. 3 at 2-3). The Waiver Denials stated that the contract language precisely reflected the improper disparity in bargaining power between carter and customer that Local Law 42 was designed to adjust (Pet. Ex. 3 at 18). Furthermore, the fact that Respondent executed 65% of its customer contracts on a single day in 1994 corresponded with a trade waste association backed scheme to prevent the entry of national carting companies into the New York City market. (Pet. Ex. 3 at 2).

In summary, the Trade Waste Commission found Respondent played a central role in enforcing the criminal cartel's property rights system (Pet. Ex. 4 at 11).

Therefore, in the interest of Respondent receiving licensure, on or about August 26, 1998, Constantino voluntarily signed an affidavit (Affidavit), which contained the following language:

> "I agree I will not participate in any way, whether as a principal (as said term is defined in Local Law 42, enacted June 3, 1996), employee, agent, consultant, representative or otherwise in the affairs of any firm or business (including but not limited to Isabella) involved in or connected to the waste collection, removal or disposal (including recycling) industry of any kind in New York City..." (Pet. Ex. 5).

The clear result of this Affidavit was Constantino's exclusion from subsequent involvement in the trade waste industry in New York City. Moreover, the Affidavit language specifically references Respondent, which is the subject of the allegations in this proceeding. As stated under Section 8 of the Affidavit, the document takes effect upon the transfer of ownership of Respondent by Constantino to his spouse, Rosemarie, and his son, John.

Following the signing of the Affidavit, on or about August 31, 1998, Respondent agreed to a Licensing Order, which stated:

> "The Applicant[5] shall not employ, retain the services of, or do business with any person or entity (or entity employing or retaining the services of such person) who has consented or agreed not to be involved in the trade waste industry." (Pet. Ex. 6, Sec. 9).

Commission was skeptical that this clause was even enforceable because it was so disproportionately penalizing (Pet. Ex. 3).

[4] The Respondent's contract does not provide any damages to the customer in the event the Respondent breaches the agreement (Pet. Ex. 3).

[5] Isabella City Carting Corp. is the Applicant for purposes of the previously issued licensing applications and orders and Respondent for purposes of this proceeding.

Significantly, Section 14 of the Licensing Order mandates that within thirty days of its consummation, Constantino must submit an application requesting permission to transfer his shares to Rosemarie and John. The Licensing Order was signed by Respondent's then principals, Constantino, John and Rosemarie.[6] Given the language of both the Affidavit and the Licensing Order, as well as the brief period of time between the executions of both documents, it is plainly apparent that these documents are related parts of the same transaction.

Therefore, as a condition of Respondent's licensure, Constantino excluded himself from the trade waste industry in New York City, and thereafter Respondent was barred from employing, retaining the services of, or doing business with Constantino.

Through the evidence presented, both documentary and testimonial, it has been established, without dispute, that Constantino performed services on behalf of Respondent. At the hearing, Investigator Santos identified photographs of Constantino entering businesses to drop off bills and collect payments on multiple occasions (Pet. Ex. 14-18; T. 46-86). Moreover, mock customer satisfaction surveys distributed by Commission investigators to the observed customers described Constantino as the person who collected payments and distributed invoices on behalf of Respondent (Pet. Ex. 18). During the interview and hearing, John confirmed the activities alleged in these photographs and admitted that Constantino delivered bills and made collections on behalf of Respondent in the Bronx and Manhattan (Pet. Ex. 20, pg. 82-87; T. 564-565, 704). At times John joined his father to make these collections (Pet. Ex. 14-17), while at other times Constantino drove Respondent's truck and made collections on his own (Pet. Ex. 18; Pet. Ex. 20, pg. 87). John also testified that Constantino engaged in solicitation for Respondent by distributing its business card (T. 566). Moreover, based on the testimony of Respondent's customer, Scaglione, Constantino is his regular bill collector and also the primary representative of Respondent since they have used its carting services (T. 327-328). Although Respondent has argued that Petitioner's evidence is unreliable due to small sample size, we disagree and believe that enough instances of bill deliverance and collection have been presented by Petitioner to meet their evidentiary burden.

Respondent argued that because Constantino received no compensation for the services he performed, he did not act as an employee (T. 565-566, 910). Whether Constantino received compensation for these services is not the controlling factor in determining employment. Significantly, the evidence indicates that the billing and collection activities conducted by Constantino were not ad-hoc events, but regularly scheduled on a weekly basis (Pet. Ex. 20, pg. 87). Moreover, the testimony of John indicates that Respondent received a benefit from the services performed by Constantino. Constantino saved Respondent time and money in providing a service that John would have had to do on his own.

[6] Notably, these are the same principals as exist today.

John stated that Constantino works for free because he could not afford to pay someone else to do these collections (Pet. Ex. 20, pg. 86-87).

There is also considerable customer goodwill gained from Constantino's personal collection visits. There is an intrinsic value in Respondent having an engaging representative that consistently deals with each customer. For instance, Scaglione described how Constantino discusses the Yankees with him or news from around the neighborhood (T. 330). Investigator Santos also observed Constantino conversing with a store worker regarding the worker's mother at the Los Tres Hermanitos deli (T. 61). In his visits, Constantino is presenting himself as the face of Respondent and his actions continually remind each customer that Respondent is their carting company.

Respondent has also argued that because Constantino received no monetary compensation (T. 565-566, 905, 910), Respondent never did "retain the services of" Constantino and is not in violation of the Licensing Order. This argument is not compelling and misinterprets the language of the Licensing Order. The fact that the Licensing Order both states that Respondent "shall not employ" and also not "retain the services of" persons who have agreed to not be involved in the trade waste industry (Pet. Ex. 6, Sec. 9) clearly indicates that the Licensing Order encompasses all types of business engagements, beyond the traditional employee relationship where an employer compensates the employee monetarily. The language to "retain the services of" provides a catch-all provision to prevent atypical or casual employee arrangements from providing channels for debarred individuals, or persons who consented to leave the carting business, to find their way back into the trade waste industry. Therefore, compensation is not necessary as this clause includes a broad range of business activities that an individual who consented to leave the trade waste industry cannot perform on behalf of a trade waste company, including those activities Constantino performed for Respondent.

As indicated by Scaglione (T. 327-328) and the mock customer satisfaction surveys collected by Commission Investigators (Pet. Ex. 18), it is apparent that this collection activity has gone on for a period of many years, if not since the signing of the Affidavit. Although Respondent has disputed the total length of time Constantino has been performing such services, Respondent has conceded these activities have occurred for some time (T. 703), if not for many years, through different licensing periods.[7] Ultimately, whether this activity has occurred for fifteen years or 15 months, it does not change the underlying finding that any instance of such performance violated Respondent's Licensing Order.[8]

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[7] As stated by Dr. Hicks, John was unsure when Constantino started performing collections, but said it was likely around the mid-2000s (T. 466).

[8] As an indication that the Respondent lacks good character, honesty and integrity, John admitted that even after being served with the Notice, Constantino continued to perform collections for the Respondent (T. 583, 704).

Nor does it matter, as Respondent has claimed, that the activities were limited to the delivery of bills and the collections of payments and therefore menial or insignificant tasks (T. 565, T. 932). On the contrary, the Commission treats these activities with enhanced scrutiny and persons reported to be performing such activities to increased disclosure requirements.[9] See Employee/Agent Disclosure Form for a Trade Waste Business. In fact, it was the people doing the collections during the days of the illegal cartel who were a linchpin of the efficacy of the property rights system, as their visits to individual businesses were used as intimidation in order to enforce unfair contracts and stifle competition. It should also be noted that nowhere in Appendix A of NYCRR 3-01 - 3-04 is there a requirement that an employee be paid for their responsibilities in order to be subject to disclosure. On the contrary, Appendix A simply refers to the types of functions performed by a person that would rise to the level of requiring disclosure, which includes bill collection. John was aware that bill collecting employees needed to be disclosed on an Employee/Agent Disclosure Form (T. 688), but never did so for Constantino.[10]

The fact that the business office of Respondent is also the home of Constantino could have presented for a more complicated analysis as to limits of the Licensing Order, but this is not the case. The allegations herein do not involve dinner table discussions regarding the business or passive income from long standing real estate holdings. Here, the affirmative conduct by Respondent permitting and even facilitating transportation for Constantino to act as the public face of the company on behalf of Respondent, year after year, far exceeded the acceptable boundaries of permissible dealings.

Respondent's argument that John had not seen the Affidavit or did not understand its contours to prohibit his father's collection of bills also defies logic (T. 539-540, 679-680). John did not just become the principal of the Respondent – he has been a principal in Respondent since 1998 and signed the Licensing Order that year acknowledging the terms of licensure. With his signature in 1998, he is imputed with the responsibility to ensure that the provisions of the Licensing Order to which he agreed are abided and by his testimony at the hearing acknowledged that he is the person responsible for overseeing the day to day operations of Respondent. Additionally, because John was a signatory to and beneficiary of Constantino's transfer of shares to John and Rosemarie as required

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[9] New York City Rules and Regulations, Title 17, Subchapter C, rules §3-01 – 3-04 (NYCRR 3-01-3-04) require licensees to disclose to the Commission in the initial application and subsequent renewal applications, "each person not otherwise a principal . . . who is an employee or agent or prospective employee or agent of an applicant for a license or a licensee and who is in a managerial capacity or in a job category listed in Appendix A". Appendix A states "Employees who perform the following functions shall be subject to disclosure pursuant to §3-01 of subchapter C of this chapter: solicitation of business, bill collection, evaluation of trade waste stream of customers, dispatchers who have regular contacts with customers, persons who have authority to agree or refuse to service customers, persons who have authority to resolve complaints."

[10] Nor was Constantino disclosed as an employee on any of the Respondent's renewal applications (Pet. Ex. 7-13) when clearly he should have been after he started performing collections.

to satisfy the terms of the Licensing Order in 1998, there is no credible basis to find that John was unaware that Constantino's activities on behalf of Respondent violated the Licensing Order. Such a transaction does not happen in a vacuum, so to now claim that he did not know the underlying reasons behind the sale rings hollow. Moreover, such an argument lacks all credibility given John's statements during the June 28, 2013 sworn interview, where he acknowledged that Constantino had been debarred from the trade waste industry (Pet. Ex. 20, pg. 33).

Respondent further argues that because there was no evidence put forth by Petitioner of mistreatment of Respondent's customers or employees that the Commission should consider this as a factor in determining Respondent's good character, honesty and integrity to operate. Findings with respect to good character, honesty and integrity are subject to strict liability. The question of mistreatment of customers or employees is irrelevant to the issue at hand – whether the terms of the Licensing Order were violated by Constantino's conduct as permitted and encouraged by John as principal of Respondent.[11] A finding that Respondent lacks good character, honesty and integrity is established simply by the breach of the Licensing Order. Furthermore, Respondent is also in violation of Title 17, Subchapter C, Rule §1-09 for violating an order of the Commission.

II. Respondent made False and Misleading Statements to the Commission

Petitioner asserts that Respondent failed to provide truthful information to the Commission on its 2012 Renewal Application (Pet. Ex. 13), and that John made false and misleading statements during his interview under oath taken on June 28, 2013 at the Commission's office (Pet. Ex. 20).

A. 2012 Renewal Application

It has been established in Part I that Respondent was employing and retaining the services of Constantino during 2013 and for an unspecified period of time prior to this year. Clearly, based on the evidence presented above, Constantino needed to be disclosed on Respondent's most recent renewal application (Pet. Ex. 13) as an employee and have an Employee/Agent Disclosure Form submitted on his behalf.[12] Respondent failed to do so, and thus failed to provide the Commission with truthful information in connection with its application, in violation of §§ 16-509(a)(i) and 509(b), Rule §1-09 and its Licensing Order.

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[11] While the Affidavit is essential in understanding the context of the Licensing Order, the Petitioner does not have to prove the Affidavit was violated by Constantino, as argued by the Respondent. It is the conduct of the Respondent, not Constantino that is at issue in this proceeding (T. 903).

[12] Either disclosed at the time the renewal application was submitted or within 10 days of Constantino's hiring/retention. See Rule §§ 2-05, 3-03.

B. June 28, 2013, Sworn Interview

During his June 28, 2013 sworn interview, John was asked several questions posed by Commission legal staff about Respondent's operations, employees, vehicles and office locations. Throughout the first half of the interview, John maintained that his father, Constantino, had no role in the company:

> Q. Are you the only one who does the collections or does someone else do the collections as well?
>
> A. No, just me. Just myself.

(Pet. Ex. 20, pg. 30, lns. 22-25).

> Q. Is there anyone else who does collections?
>
> A. No.

(Pet. Ex. 20 pg. 31, lns. 9-11).

> Q. So since he (Constantino) signed the debarment, the only people who would have done collections for Isabella City Carting are you, Thomas Minervino, Ruben Madrid and Joseph Canzone?
>
> A. Correct.

(Pet. Ex. 20 pg. 33, lns. 11-15).

> Q. Does he (Constantino) ever solicit business from them (Pig Heaven restaurant) or does he ever do collections?
>
> A. No, no.

(Pet. Ex. 20 pg. 71, lns. 4-6).

> Q. Has he (Constantino) ever collected from any of the customers?"
>
> A. No, like I said, it's (sic) 84. He's not a young man."

(Pet. Ex. 20 pg. 72, lns. 8-11).

John's story changed however, when presented with photographs taken by Investigator Santos (Pet. Ex. 20 pg. 80-82) clearly showing Constantino entering and exiting a truck marked with Respondent's logo and name, and engaging in bill collecting at several business locations. Once confronted with the irrefutable

evidence of Constantino's activities, John admitted that the photographs did in fact show Constantino engaging in collection activity on behalf of Respondent:

> Q. Why didn't you testify to [Constantino making collections] earlier?
>
> A. Oh, because I knew you would have a problem with it.
>
> Q. So your father collects from these stops that we discussed earlier?
>
> A. Yes.

(Pet. Ex. 20 pg. 82).

Therefore, the interview testimony demonstrates that John deliberately attempted to mislead the Commission.

Respondent attempted to overcome these false statements with the testimony of Dr. Hicks at the hearing. However, the fact that John lied was not disputed by Dr. Hicks or in any other evidence presented by Respondent. As stated by Dr. Hicks:

> Q. You are not here today to opine as to whether he (John) lied or not at his deposition in June of 2013?
>
> A: (Dr. Hicks) No.

(T. 218).

Rather, Dr. Hicks attempted to explain John's lies as being motivated by protectiveness of his father, Constantino:

> Q. Are you familiar with the term protective instincts?
>
> A. Yes.
>
> Q. Did that play a role in the basis of your opinions?
>
> ***
>
> A. That's not really a psychological term of art. I think what [Respondent's counsel] is probably referring to is what we discussed and what Mr. Isabella told me in the testimony, which is that his biggest concern when he realized the drift of the deposition is that he might endanger his father in some way in relation to knowing that his father had signed an agreement at the time that he was barred from the industry. And that's –

> that's another factor that makes his choice to avoid answering the questions fully and truthfully in the beginning a bit more understandable. Now I found that psychologically credible. But I can't tell whether that's – whether that was Mr. Isabella's primary concern as opposed to endangering himself or jeopardizing his license, but that's what he said was his biggest concern during the course of the deposition.

(T. 418-419).

Dr. Hicks' testimony only reinforces Petitioner's allegations that John intentionally lied to Commission staff during his interview because he knew the Respondent could not do business with Constantino.

In an attempt to deflect blame from John, himself, Respondent put forth additional testimony from Dr. Hicks explaining that John lied because of the form of the Commission staff's questions. As stated by Dr. Hicks:

> "Then when he (Constantino) started being asked questions I would say of an indirect, he was asked – these were getting at whether he had used his father in any capacity in the business, but he was not directly asked did you use your father in any capacity early on in the interview. Instead he was asked more indirect open ended questions. If he had been asked the question outright and directly in the beginning it might have been easier for him to make that choice whether to try and deceive or to tell the whole truth. But the position he found himself in was being asked indirect questions that he could answer evasively."

(T. 410-411).

However, the Commission staff went to considerable length to make sure that John fully comprehended every question:

> Q. If I ask you a question that you don't understand or you didn't hear, let me know and I will rephrase, O.K.?
>
> A. Absolutely.
>
> Q. You stated before that you're not here with an attorney and that you may want to come back or if you want to come back with an attorney, you will let me know, correct?
>
> A. Yes.

Q. Do you understand that anything you say at this deposition that is false or misleading could have negative ramifications for you and/or Isabella Carting?

A. Yes, I do.

Q. If I ask you a question and you don't know the answer, make it clear that you don't know, O.K., or you're not sure of the answer.

A. Correct.

Q. If you answer a question, it will be presumed that you understood the question. As I stated before, if you want to take a break to consult with an attorney or just to take a break, you'll let me know, O.K.?

A. I will.

Q. And if you need to take a break for any reason, just make that clear.

A. Sure.

(Pet. Ex. 20, pgs. 9–10).

Petitioner clearly indicated to John exactly what to do if he did not understand the question being asked of him and allowed him every opportunity to have questions he did not understand restated, but at no time did he avail himself of the opportunity to do so.

As to the assertion by Dr. Hicks that open-ended questions could lead to misstatements of fact, while this could be possible in certain situations, a review of the transcript of the interview does not lend itself to such a finding. In several instances, John was asked direct questions such as "he [Constantino] never collects money for any of the customers" (Pet. Ex. 20, pg. 70; T. 450) and "has he [Constantino] ever collected from any of the customers" (Pet. Ex. 20, pg. 72; T. 451) and in response to these clear and concise questions, lied. There is therefore nothing in the record to support a finding that in this instance John was confused or mislead by difficult or diffuse questions leading to his providing false testimony. With respect to the allusion by Dr. Hicks to John fearing for his father's well being, while this also may be possible in certain situations, nothing in Dr. Hicks' testimony explained how this was a credible finding in this instance.

Despite Respondent being allowed wide berth with Dr. Hicks' testimony, nothing in Dr. Hicks' findings rehabilitates John or excuses the false testimony provided to the Commission.

Instead, what is abundantly clear is that John's testimony changed only when he was caught in the lie by virtue of the irrefutable evidence documenting Constantino's repeated collection activities on behalf of Respondent. The interview transcript and the hearing testimony are unambiguous: John gave false and misleading information to the Commission in the interview in violation of its Licensing Order, Rule §1-09, and therefore also lacks honesty, good character and integrity under §16-509(a).

FINDINGS AND CONCLUSIONS

1. Respondent violated its Licensing Order by employing and retaining the services of Constantino Isabella, a person who consented to not be involved in the carting industry.
2. Respondent made false and misleading statements to the Commission on its 2012 Renewal Application and in a June 28, 2013 sworn interview.

RECOMMENDATION

The Licensing Order provides for revocation when its conditions are violated. This Commission finds revocation is warranted as Respondent violated its Licensing Order by retaining the services of Constantino who consented to not be involved in the trade waste industry and for failing to provide truthful information to the Commission in a renewal application and a sworn interview.

This Commission finds Respondent in violation of Rule §1-09, for violating a Commission order and for providing false and misleading statements to the Commission as to Constantino's role in the company. Respondent also failed to provide truthful information in connection with an application under §§ 16-509(a)(i), 509(b). This Commission finds under §16-509(a) that Respondent lacks good character, honesty, and integrity for violating its Licensing Order and for also providing false and misleading information to the Commission. Therefore, pursuant to §§ 16-513(i) and (vii), the Commission finds that revocation on these independently sufficient grounds is warranted.

This license revocation is effective as of Monday, January 6, 2014. As of said effective date, Respondent may not operate as a trade waste business in the City of New York.

Dated: December 18, 2013

THE BUSINESS INTEGRITY COMMISSION

Shari C. Hyman
Commissioner and Chair

John Doherty, Commissioner
Department of Sanitation

Rose Gill Hearn, Commissioner
Department of Investigation

David Friedman, Senior Advisor (designee)
Office of Financial Empowerment of the DF
Department of Consumer Affairs

Andrew Schwartz, First Deputy Commissioner (designee)
Department of Small Business Services

John Denesopolis, Inspector (designee)
New York City Police Department