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 REGISTRATION APPLICATION OF A & S LEASING CORP. (#3658) TO OPERATE AS A TRADE WASTE BUSINESS

I. PRELIMINARY STATEMENT

A & S Leasing Corp. ("Applicant" or "A & S Leasing") (#3658) has applied to the New York City Business Integrity Commission ("Commission"), formerly known as the New York City Trade Waste Commission, for a registration to operate as a trade waste business. See Title 16-A of the New York City Administrative Code ("Admin. Code") § 16-505(a).

On February 9, 2015, the Commission staff issued and served the Applicant with an eighteen (18) page Notice to the Applicant of the Grounds to Deny the Registration Application of A & S Leasing Corp. to Operate as a Trade Waste Business ("Recommendation"). The Applicant was granted ten (10) business days to respond, until February 24, 2015. See Title 17, Rules of the City of New York §2-08(a). No response was received from the Applicant. The Commission has carefully considered the Commission staff's Recommendation and the Applicant's failure to respond.

Based on the record as to the Applicant, the Commission now denies the registration application of A & S Leasing because A & S Leasing lacks good character, honesty and integrity for the following independently sufficient reasons:

A. Frank Sciarrino, the Applicant's Principal, has Associated with a Person Identified by Law Enforcement as a Member of the Bonanno Crime Family when he Knew or Should Have Known of his Organized Crime Status.

B. Frank Sciarrino, the Applicant's Principal, has Associated with a Person who has been Convicted of a Racketeering Activity.

C. Frank Sciarrino, the Applicant's Principal, is a Convicted Racketeer.

D. Frank Sciarrino, the Applicant's Principal, has a Felony Conviction that Demonstrates he Lacks Good Character, Honesty and Integrity.

E. The Applicant Failed to Provide Information and Documentation Required by the Commission.

II. 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;
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> 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;
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> 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., 107 F.3d at 995 (2nd 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.

III. STATEMENT OF FACTS

On or about November 24, 2009, the Applicant applied to the Commission for a registration to operate as a trade waste business. See A & S Leasing Corp.'s Application for a trade waste registration ("Application"). The Applicant disclosed Frank Sciarrino ("Sciarrino") as its sole principal. See id. at 13. On September 3, 2013, Sciarrino provided the Commission with sworn testimony in connection with the Application ("*Sciarrino* Tr.").

According to Sciarrino, the Applicant was established as the trucking arm of a concrete production company called Nassau Ready Mix Corp. ("Nassau"), which is also wholly owned by Sciarrino. *Sciarrino* Tr. at 55-56, 61, 68, 103-104. These companies are very much interconnected. The Applicant delivered sand, stone and concrete debris to Nassau, which in turn processed these materials into concrete. *Sciarrino* Tr. at 55-56, 68. The Applicant and Nassau also have shared the same physical plant. Sciarrino operated both companies out of a facility at 1 Sheridan Boulevard in Inwood, New York ("Sheridan Facility").[1] See Application at 1-2; *Sciarrino* Tr. at 54, 86. Moreover, the Applicant relied on Nassau's employees to handle the Applicant's payroll and other administrative functions. *Sciarrino* Tr. at 67.

A. Sciarrino's Association with Jerome Asaro

For much of the past decade, Sciarrino has employed Jerome "Jerry" Asaro ("Asaro") as an employee of Nassau. Asaro is a convicted racketeer, who has been identified as a Captain in the Bonanno crime family. Sciarrino's statements repeatedly tried to minimize this association, which can only be described as extensive, significant and troubling.

During the entire period that Sciarrino has known Asaro (*Sciarrino* Tr. at 23), he has been a member of the Bonanno crime family. After years as an associate, Asaro was inducted into the Bonanno crime family in the early 1990s. See Memorandum of Law in Support of

[1] In 2013, Nassau ceased operations (*Sciarrino* Tr. at 60-61) as Sciarrino sold a fifty percent (50%) stake in Nassau's assets to the Haughland Group. *Sciarrino* Tr. at 58-60. Nassau's assets were divided among two (2) new entities, Inwood Material Terminal, LLC ("IMT") and Certified Concrete, LLC ("CC"). *Sciarrino* Tr. at 60-62, 104-105. IMT performs material recycling, while CC manufactures ready mix concrete. Although new employees have been added (*Sciarrino* Tr. at 70-71), these companies continue to be managed by Sciarrino at the Sheridan Facility.

Pretrial Detention, United States v. Vincent Asaro et. al. 14-CR-26, at 33 (filed January 23, 2014) ("Pretrial Memo"). Later in the 1990s, Asaro's father, Vincent Asaro, a notorious member of the Bonanno crime family, promoted Asaro to acting Captain.[2] Id. Asaro then acted as Captain in place of his father while Vincent Asaro served a prison sentence.[3] Id. Later, Asaro was fully promoted to Captain. Id. In or about 2003, Asaro was a Captain in the Bonanno crime family, with a crew that included Vincent Asaro. Id.

Moreover, besides simply being a high ranking member of an organized crime group, Asaro has spent his life committing violent and perverse acts in furtherance of the Bonanno crime family. In the 1980s, at the behest of his father, Asaro and an associate helped dig up and move the remains of Paul Katz ("Katz"). Id. at 34. Vincent Asaro and James "Jimmy the Gent" Burke ("Burke") had murdered Katz in the late 1960s, after he was suspected of being a police informant.[4] Id. at 19-20. During the early 1980s, Asaro also took part in arson of the night club the Afters Lounge of Ozone Park, Queens. Id. at 27. Asaro was instructed by his father to commit the arson due to anger that the night club's new owners were replacing the Afters Lounge with a social club that would cater to African-Americans.[5] Id. At another point in 1980s, Asaro vigorously solicited his father and others to participate in the murder of a relative they believed acted as a police informant. Id. at 34, 55. Between 1984 and 1986, Asaro attempted an armed robbery of an armored car believed to be carrying $1 million in currency. Id. at 35. In the early 1990s, Asaro shot a woman in a Queens, New York bar in retaliation for an assault on his sister. Id. at 54. Asaro also compiled a string of other minor arrests and convictions that occurred throughout the 1970s and 1980s.[6]

Some of the criminal acts Asaro committed took place during the periods of time in which Sciarrino and Asaro had a relationship, which extends back until at least 1998. *Sciarrino* Tr. at 23. For instance, in the 1990s Asaro was involved in an insurance fraud scheme. See Trial Transcript, United States v. Amato et al. CR-03-1382, at 444 (filed July 16, 2008). As part of the scheme, Asaro would crush the cars owned by people who were interested in disposing of their

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[2] Vincent Asaro has been a member of the Bonanno crime family for approximately thirty (30) years, including time spent as a member of the crime family's administration. Vincent Asaro's record epitomizes a career criminal, with an over fifty (50) year history of committing violent crimes, including twenty-one (21) arrests since 1957. Vincent Asaro committed the murder of suspected police informant, Paul Katz in the late 1960s, and was involved in the infamous 1978 Lufthansa Heist at John F. Kennedy International Airport, whereby over $6 million of currency and jewelry was stolen from the airline. Most recently, Vincent Asaro was convicted in 1998 in New York State Court for enterprise corruption, criminal possession of stolen property and offering a false instrument to file, to which he received a sentence of four (4) to twelve (12) years' incarceration. Vincent Asaro also has two (2) federal convictions from 1970 and 1972, respectively for theft of an interstate shipment and burglary of a post office. Vincent Asaro has numerous other convictions from the 1960s ranging from assault to larceny. See Pretrial Memo at 47.

[3] See "Elusive Mobster Convicted," Pete Donohue, *New York Daily News*, November 20, 1998. Asaro was identified as a Captain in the Bonanno crime family operating out of Ozone Park, Queens, who provided protection to an auto theft ring. See also Decision of the IBT Independent Review Board, May 24, 2001.

[4] Burke, an associate of the Lucchese crime family, planned and carried out the Lufthansa Heist with Vincent Asaro and others (many of whom were subsequently murdered). See "A Mob Life, on the Margins and Out of Favor," Joseph Goldstein, *The New York Times*, January 24, 2014.

[5] Apparently, Afters Lounge was a known meeting place for organized crime members and associates. The night club name refers to "after Lufthansa." See Pretrial Memo at 27.

[6] Asaro also has several misdemeanor convictions including attempted petit larceny, attempted arson in the fourth degree and criminal possess of stolen property in the fifth degree. See Pretrial Memo at 53.

vehicles to commit insurance fraud.[7] Id. These car owners would then call their insurance company and report their car stolen. Id. Furthermore, Asaro's vehicle crushing activities went beyond extending assistance to fraudsters. In or about 1999, Asaro picked up and crushed the blood soaked truck in which Salvatore Vitali and several other Bonanno crime family members had murdered Gerlando Sciascia aka "George From Canada." See Pretrial Memo at 96-100.

Moreover, Asaro's employment by Sciarrino was interrupted by a major indictment, followed by a criminal conviction and a period of incarceration. In February 2007, Asaro, along with other members of the Bonanno crime family, was criminally charged with racketeering in the Eastern District of New York. See Press Release, US Attorney's Office, Eastern District of New York, February 6, 2007. In September 2008, Asaro was convicted of engaging in a pattern of racketeering activity (as defined under 18 U.S.C. § 1961), including illegal gambling and loan-sharking. See Pretrial Memo at 52-53. Asaro was subsequently sentenced to thirty (30) months imprisonment followed by three (3) years of supervised release. Id. at 53. Furthermore, in Asaro's guilty plea to racketeering charges in 2007, he allocuted to being "employed by or associated with the Bonanno family." See Transcript for Criminal Cause for Pleading, United States v. Asaro, 06-CR-800, at 7 (filed September 7, 2007). Asaro was released from prison in or about November 2010, and he resumed employment with Nassau.

In or about May 2011, months after being released from prison, Asaro violated the terms of his supervised release with the United States Department of Probation ("USDP") when he was observed by law enforcement agents with organized crime associates at his daughter's wedding.[8] See Pretrial Memo at 53. Asaro spent ninety (90) days in a residential re-entry center for violating his release conditions. Id. Apparently, this violation did not impact Asaro's employment status with Nassau.

Between 2011 and 2013, while Asaro worked for Nassau and was under supervised release with the USDP, he continued to engage in loan sharking and extortion. For instance, in early 2013, Asaro obtained $15,000 from a usurious loan to a car wash employee after Asaro intimidated the employee into paying him and his father. Id. at 36. In January 2014, Asaro was indicted by the US Attorney's Office for the Eastern District of New York for racketeering conspiracy, loan-sharking and loan-sharking conspiracy charges, as part of a forty (40) year racketeering conspiracy. Id. at 5, see also Superseding Indictment, United States v. Asaro et al. 14-CR-26, (filed February 12, 2014). Asaro was denied bail pending his trial. See Order of Detention Pending Trial, United States v. Asaro et al. 14-CR-26, (filed January 23, 2014). On or about October 10, 2014, Asaro pleaded guilty to engaging in a pattern of racketeering activity that included Accessory After the Fact to Murder and Arson.[9] See Criminal Cause for Pleading; Superseding Information, United States v. Asaro 14-CR-26, (filed October 10, 2014).

During his 2013 sworn testimony, Sciarrino testified that he knew Asaro for fifteen (15) years, well before Asaro commenced employment at Nassau. Sciarrino stated that before hiring

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[7] Ironically, Asaro oversaw the crushing operation at Nassau. *Sciarrino* Tr. at 69.

[8] One of these persons is a Gambino crime family associate with whom Asaro attempted a robbery with.

[9] See "Son of Bonanno mobster involved in infamous Lufthansa heist pleads guilty to moving rotting corpse from Queens house" John Marzulli, *New York Daily News*, October 10, 2014.

Asaro, he had known Asaro as an employee of a company called Astro Fence.[10] *Sciarrino* Tr. at 23. Sciarrino further stated he had used the services of Astro Fence at previous companies he worked at or managed.[11] *Sciarrino* Tr. at 85. Astro Fence ceased doing business in 2001, and Asaro subsequently spent several years working at a construction company before coming to work at Nassau. See Memorandum on behalf of Jerome Asaro, United States v. Asaro, 06-CR-800, at 5, (filed August 25, 2008) ("Asaro Memo").

In 2005, Sciarrino hired Asaro to work for Nassau. Id. Despite initially testifying that Asaro was employed as a dispatcher (*Sciarrino* Tr. at 21), Sciarrino described Asaro as overseeing a variety of activities at the Sheridan Facility that indicates he was viewed as a key management employee. Later in his testimony, Sciarrino characterized Asaro as the yard manager of the Sheridan Facility and being in the management hierarchy of Nassau, just below his brother, Salvatore Sciarrino. *Sciarrino* Tr. at 23, 69-70. According, to Sciarrino, Asaro also worked as a foreman and welder at the Sheridan Facility.[12] *Sciarrino* Tr. at 23-24, 69.

Sciarrino stated that one of Asaro's duties consisted of ticketing trucks coming into the Sheridan Facility to drop off recycled materials for Nassau. *Sciarrino* Tr. at 64. According to Sciarrino, Asaro was responsible for handing the truckers a ticket charging them for the cost of dumping the materials and in exchange the truckers would hand payment to Asaro in order to proceed to drop off materials at Nassau. Id.

Aside from his period of incarceration between 2008 and 2010, Asaro was employed at Nassau until his indictment on racketeering charges in 2014.[13] Although Asaro is currently in jail, it is unclear whether he is still being compensated as an employee of Nassau by Sciarrino.

Although Asaro's employment at Nassau was preceded by a lengthy history of criminal acts, since at least 2008 Sciarrino has known Asaro to be a convicted racketeer:

> Q. Have you ever associated with anyone that's been convicted of racketeering activity?
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> ***
>
> A. Yeah I had an employee under Nassau Ready Mix, Jerry. Jerome Asaro, he was a dispatcher for the concrete.

Sciarrino Tr. at 18-21.

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[10] Sciarrino's answers regarding Astro Fence are puzzling. During the interview Sciarrino stated that he was unsure if Asaro owned Astro Fence. *Sciarrino* Tr. at 90. Other sources have named Asaro as the owner and operator of Astro Fence. See Asaro Memo at 5; Decision of the IBT Independent Review Board, May 24, 2001.

[11] Sciarrino stated that he had used Astro Fence eighteen (18) to twenty (20) years ago when he was working at SQKFC and South Island Industries. *Sciarrino* Tr. at 85.

[12] Asaro also made sure that everyone was doing their job in the crushing operation. *Sciarrino* Tr. at 69.

[13] It is possible that Asaro's employment was interrupted by his confinement in a residential reentry center in 2011.

Sciarrino also had some knowledge that Asaro's 2008 conviction involved illegal gambling, a racketeering activity, but was disinterested in the underlying circumstances of the conviction:

> A. [H]onestly, I don't know what he [Asaro] was convicted of, because it is none of my business. And that, I guess, that would be association, because he worked there [for Nassau at the Sheridan Facility] if that's what you mean by just working with somebody. He got in trouble I think, I'm guessing I think it was gambling, but...
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> Q. Illegal gambling?
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> A. I didn't look at the case. I didn't look at the paperwork.
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> Q. How did you hear about this?
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> A. He was an employee so he got in trouble and then went away, came back and that was it. So while he was working there, I was associating with him. Yes, he was an employee of the company.

Sciarrino Tr. at 21-22.

Moreover, when Asaro was indicted for racketeering in 2007 with other members and associates of the Bonanno crime family, Sciarrino thought he had discussed the indictment with Asaro:

> Q. When he got in trouble, did you ask him about the circumstances of it?
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> A. I'm sure we had conversations. Do I remember the conversations, no.

Sciarrino Tr. at 87.

Despite Asaro allocuting to being involved with the Bonanno family in 2007, Sciarrino has claimed that he has never knowingly associated with members or associates of organized crime. *Sciarrino* Tr. at 16-18. Sciarrino also stated he had no knowledge of Asaro being involved in organized crime:

> Q. Have you ever heard of any rumors that Mr. Asaro was involved in organized crime?
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> A. Rumors, not that I recall. The only thing I heard like I told you earlier, the gambling.

Q. Where did you hear that from?

A. I don't remember. People talking that he got in trouble.

Q. People that were employed with your company?

A. Workers, yeah.

Q. When you first found out about what happened to Mr. Asaro that he was having problems with the law, were you concerned for your company?

A. No. It was like a postal worker killing somebody, what does it have to do with the government right?

Sciarrino Tr. at 102-103.

However, Nassau was not a large bureaucracy, but a small company with six (6) to seven (7) employees. *Sciarrino* Tr. at 63. Moreover, Sciarrino was dismissive toward the prospect of Asaro's conviction being detrimental to his businesses and was unperturbed by what other people thought of Asaro. As stated by Sciarrino:

Q. Did it concern you at all though that people had whispered that this guy [Asaro] may have had involvement in organized crime?

A. Truck drivers, if you want to hear stories about what truck drivers say, I wouldn't waste your time with that. People talk. That wasn't my concern at all. I looked at it in the way that the guy was a good employee when he worked for me. What he did didn't affect my company. Asked for a job when he came home, I offered the guy a job. That's it, end of story.

Sciarrino Tr. at 118-119.

By 2008, there was in fact a strong basis to know Asaro was involved in organized crime, but Sciarrino decided to bury his head in the sand. Sciarrino stated that he does not socialize with Asaro outside of work. *Sciarrino* Tr. at 24. However, the facts demonstrate a close social relationship between Sciarrino and Asaro. First, Sciarrino stated that on occasion he spoke on the phone with Asaro when he was incarcerated. *Sciarrino* Tr. at 25-26. Second, Sciarrino traveled hundreds of miles to visit Asaro in prison in Ohio or West Virginia. *Sciarrino* Tr. at 24, 100. As stated by Sciarrino when asked about the time of prison visit:

A. I don't know. A couple of hours, I guess. I drove myself, I stayed in West Virginia, I think it was. It was right by Virginia, because I remember crossing the border to stay. I drove to see him and then I drove home after seeing him.

Applicant's attorney: Is that what you meant? How long was the trip?

Q. Yes, how long.

A. However long it takes, it was pretty far, six hours, seven hours if I remember.

Q. How much time did you spend with him in prison?

A. A couple of hours.

Q. Why did you decide to visit him [Asaro]?

A. I don't know. I just wanted to see the guy, went to see the guy. He worked for me a few years and I knew what it was like to be there [in prison], so I went to see him.

Sciarrino Tr. at 100.

Moreover, Sciarrino stated he has been to Asaro's house perhaps a dozen times in eight (8) years (*Sciarrino* Tr. at 88), which is a significant amount of time considering the periods Asaro was incarcerated. Furthermore, Sciarrino had trouble recollecting the purpose of some of his visits. Id. Sciarrino's actions suggest Sciarrino and Asaro are friends, as well as coworkers. Therefore, it is not surprising that Asaro resumed employment at Nassau upon his release from prison in 2010.[14]

Sciarrino however, also provided self-serving testimony that the anti-discrimination provisions of New York State Correction Law §§ 752 and 753 ("Correction Law") (See infra pg. 16) factored into his decision to rehire Asaro after his incarceration. *Sciarrino* Tr. at 116-118. Sciarrino's insistence that the Correction Law was even a consideration in Asaro being rehired is belied by earlier statements Sciarrino made to USDP, in their preparation of the Presentence Report ("PSR") for Asaro in 2008. The PSR noted that the president of Nassau (Sciarrino) said that Asaro was reliable, a pleasure to work with, and took his job very seriously. See Asaro Memo at 5. The president of Nassau also said that "[u]pon his [Asaro's] release, his old job awaits him. Id. Thus, it appears that there was no consideration of the Correction Law at the time, as the statements made in the PSR demonstrated that Sciarrino had decided to rehire Asaro based on other factors before he even started serving his sentence.

Moreover, the Correction Law provides a major exception to circumstances where the convictions are related to the field of employment (which was acknowledged by Sciarrino's counsel, *Sciarrino* Tr. at 27). Given the history of corruption in the trade waste and concrete industries,[15] Asaro's conviction for racketeering (not to mention that he was a member of the

[14] Likewise, Asaro's violation of his supervised release, which resulted in a ninety (90) day confinement in a residential reentry center, did not affect his employment.

[15] See United States v. Salerno, et al.; See supra pg. 1-2.

Bonanno crime family) provided Sciarrino clear grounds to exclude Asaro from further work at Sciarrino's companies. Sciarrino could have relied upon this information to prevent Asaro's rehiring, but chose otherwise.

Furthermore, as the Applicant has been seeking to be granted a trade waste registration with the Commission - an agency whose primary goal is to prevent racketeers and organized crime members from being involved in the trade waste industry in New York City - Sciarrino had even more compelling grounds to prevent Asaro from any future participation with his companies. Instead, Asaro was placed back in a position of overseeing access control into the Sheridan Facility, a role which determines pricing of incoming materials and handles payments by truckers.

Sciarrino clearly has a close business and personal relationship with Asaro, a Captain in the Bonanno crime family. Given the level of intimate association between these individuals, Sciarrino knew or should have known that Asaro was a member of the Bonanno crime family.

B. Sciarrino is a Convicted Racketeer.

Sciarrino, the principal of the Applicant has also had his own criminal issues. In or about 1992, Sciarrino acted as a middleman in a scheme to transport stolen construction equipment from Long Island, New York to New Jersey, in exchange for payments in excess of $70,000. See Indictment, United States v. Sciarrino, 93 CR 539, (filed May 19, 1993). Henry Alfano ("Alfano"), a person Sciarrino knew from work, approached Sciarrino to arrange for the transport of stolen construction equipment. At the time, Sciarrino knew the construction equipment was stolen, but decided to take part in the illegal scheme. *Sciarrino* Tr. at 33-34. Sciarrino then introduced Alfano to a person named James Patterson ("Patterson"), who transported the stolen equipment to New Jersey. *Sciarrino* Tr. at 32.

On November 1, 1993, in the Eastern District of New York, Sciarrino pleaded guilty under 18 U.S.C. § 2314[16] to two (2) counts of Knowingly and Willfully Transporting, and Causing to be Transported, in Interstate Commerce Merchandise of $5,000.00 or more, which he knew to be Stolen[17] and Converted. See Standard Plea, United States v. Sciarrino, 93 CR 539, (filed November 1, 1993). Following his felony conviction, in 1994 Sciarrino was sentenced to fifteen (15) months imprisonment and three (3) years supervised release. See Criminal Cause for Sentencing, United States v. Sciarrino, 93 CR 539, (filed May 23, 1994).

The considerable sentence Sciarrino received differs substantially from the minor role he now purports to have played in the conspiracy. According to Sciarrino, a person he did not know who bought the stolen equipment from Alfano in New Jersey, was caught by the authorities and cooperated. *Sciarrino* Tr. at 36. Alfano informed on Patterson, who testified to a grand jury about Sciarrino's role. Id. Ultimately, Sciarrino testified he is regretful for a "mistake" he made when he was just a "kid." *Sciarrino* Tr. at 114.

[16] Pursuant to 18 USC § 1961(b), any act indictable under 18 USC § 2314 is considered "racketeering activity."
[17] The stolen equipment consisted of two (2) Caterpillar pay loaders.

However, during his Commission testimony many questions regarding this conspiracy were left unanswered. Sciarrino stated that he knew Alfano as someone who, like him at the time, delivered sand to a concrete plant on Long Island, but expanded little on their relationship.[18] *Sciarrino* Tr. at 31. Sciarrino testified that he knew the construction equipment to be stolen, but was unsure where the stolen equipment came from. *Sciarrino* Tr. at 33.[19] However, based on his own statements, Sciarrino's involvement seems nonsensical. According to Sciarrino, Alfano was a mere business acquaintance, who he did not have any social relationship with, but nevertheless on a whim was quite willing to help him transport stolen construction equipment. *Sciarrino* Tr. at 34. In fact, Sciarrino said Alfano's company actually owed him money at the time (*Sciarrino* Tr. 115), yet claims he entered into a serious criminal conspiracy with no financial upside or benefit for himself.[20]

Nor was Sciarrino candid in explaining the aspects of the conspiracy to which he admits to participating in: (1) Sciarrino was not sure how he found Patterson, and (2) Sciarrino could not remember why he thought Patterson was the right person to move the stolen equipment. *Sciarrino* Tr. at 35.

C. The Applicant failed to provide Information and Documentation Required by the Commission.

During Sciarrino's interview, he either expressed hesitation or failed to provide answers, when asked questions regarding both his and Asaro's employment and compensation. Sciarrino and his counsel repeatedly stated they would check their records or talk to Sciarrino's accountant, and then provide this information to the Commission. A summary of these exchanges are presented below:

> Q. Do you know how much Jerry Asaro gets paid?
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> A. No, he works on salary. But we can get that for you, if you need it.
>
> Q. Do you have a rough idea what that salary is?
>
> A. No, I don't.

Sciarrino Tr. at 75.

> Q. For how long was [Asaro] employed with Nassau Ready Mix?
>
> A. If – I could check the payroll records, but I think it was probably at least five years, six years.

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[18] The concrete company was Keyway Concrete, which was owned by Alfano's uncle. Id.

[19] The indictment tells another story by alleging that not only was Sciarrino remunerated for his involvement, he actually brought some of the stolen equipment to Alfano. See Indictment Count 1. United States v. Sciarrino, 93 CR 539 (filed May 19, 1993).

[20] Despite initial charges that Sciarrino exchanged money with Alfano and was compensated for his efforts in arranging the transport of the stolen equipment (See Indictment, Count 1), Sciarrino stated he was not remunerated for any part of the conspiracy. *Sciarrino* Tr. at 39.

Sciarrino Tr. at 22.

> Q. Do you draw salary from A&S Leasing?
>
> A. No, I don't.
>
> Q. Do you draw a distribution from A&S Leasing?
>
> A. I guess I'd have to check with my accountant.
>
> ***
>
> Q. Have you ever derived any income from A&S Leasing?
>
> A. I'd have to check with my accountant.

Sciarrino Tr. at 49-50.

> Q. Okay. Did you have any consultants that assisted A&S Leasing?
>
> A. You know I can check that and get back to you. We had a salesman, I don't know if he had his own corporation and got paid to a company instead of as a paycheck, but I'd have to get back to you on that.

Sciarrino Tr. at 80-81.

In light of Sciarrino's answers and his stated commitment to providing accurate information, the Commission Staff requested the Applicant produce various payroll/accounting documents, as well as all employment records related to Asaro and all records related to Sciarrino's 1994 conviction. See April 1, 2014 letter from Commission Staff to the Applicant's attorney. In the letter, the Commission extended a deadline of April 16, 2014 to produce the requested records. On April 2, 2014, the Applicant's attorney responded to the Commission letter via email and asked for thirty (30) days to produce said records, due to a trial he was scheduled to have in early April 2014. Also on April 2, 2014, the Applicant's attorney advised the Commission via email of the name of the matter set for trial and that he would amenable to a rolling production of the requested documents. That same day, the Commission Staff granted the Applicant's attorney's request, with final production of documents due by the close of business on May 2, 2014. The Applicant's attorney acknowledged these terms in another email on April 2, 2014. Notwithstanding their agreement to provide a rolling production, during the next month, no documents were received from the Applicant.

Minutes away from the May 2, 2014 deadline, the Commission received a letter from the Applicant's attorney, which asked for a further extension until May 16, 2014. See May 2, 2014 letter from the Applicant's attorney to Commission Staff. This letter stated that the Commission's

document request was voluminous and duplicative, but other than indicating that all Sciarrino conviction documents have already been produced, failed to set forth any good cause with specificity for requesting additional time. The letter also attempted to modify the scope of the Applicant's production of payroll records to the previous three (3) years. The letter further stated that the Applicant is no longer interested in pursuing a registration.

On May 6, 2014 a reply letter was sent via email by Commission Staff to the Applicant's attorney, granting the time extension, but stating that no further extensions will be granted. See May 6, 2014 letter from Commission Staff to the Applicant's attorney. The letter also denied any purported attempt by the Applicant to modify the scope of production from the original request, and that any modification in a final production would be considered by the Commission a failure to provide information and/or documentation required by the Commission

No materials were received by the Applicant on or before May 16, 2014, nor were any letters received by the Commission from the Applicant's counsel indicating that they would require additional time and/or fail to meet the production deadline they requested. To this date, no records or communications have been received by the Commission from the Applicant or its counsel.

IV. BASIS OF DENIAL

The Commission's staff has conducted a background investigation of the Applicant and its principal. For the reasons set forth below, the staff recommends that the Commission deny the Applicant's Application.

A. Frank Sciarrino, the Applicant's Principal, has Associated with a Person Identified by Law Enforcement as a Member of the Bonanno Crime Family when he Knew or Should Have Known of his Organized Crime Status.

The Commission is expressly authorized to deny the registration application of an applicant company if its 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 5-6.

Here, Sciarrino has had a long-term business and social relationship with Asaro, a Captain in the Bonanno crime family.

Sciarrino has known Asaro for well over fifteen (15) years, during which Asaro has been involved with the Bonanno crime family. Following years as an associate, Asaro has been a member of the Bonanno crime family since the early 1990s. Sciarrino has employed Asaro since 2005 and his status as member of organized crime has been publically known since at least 2007, when he allocuted to being involved with the Bonanno crime family as part of a criminal conviction. Moreover, Sciarrino was well aware that Asaro was convicted of racketeering in 2008. Asaro spent twenty (20) months in prison between 2008 and 2010, but was rehired by Sciarrino upon his release. Despite a period of time in 2011 when Asaro was confined to a

residential reentry center for violating terms of his supervised release by associating with associates of organized crime, Asaro enjoyed uninterrupted employment from Sciarrino until 2014. In early 2014, Asaro was indicted again on new racketeering charges, which in or about October 2014 he pleaded guilty to.

While this business relationship alone is troubling, Sciarrino's actions also suggest a close social relationship exists between him and Asaro. First, in the wake of Asaro's racketeering conviction in 2008, Sciarrino made favorable statements regarding Asaro to USDP, and even offered Asaro his job back after prison. Second, Sciarrino testified to taking phone calls from Asaro while he was incarcerated. Third, Asaro admitted to driving hundreds of miles to visit him in prison. Finally, Sciarrino testified to visiting Asaro's home on approximately a dozen (12) occasions in the past eight (8) years.

Although Sciarrino claims he did not know of Asaro's organized crime involvement, given the extent of their business and social relationship, Sciarrino's attempts to claim ignorance are not credible. Sciarrino demonstrated he did not care about Asaro's racketeering conviction and has likely known for many years about Asaro's organized crime ties, but has continued to employ him despite this fact. Clearly, Sciarrino's relationship with Asaro presents an association that is inimical to the standards set forth under Local Law 42.

The Commission should therefore find that the Applicant lacks good character, honesty, and integrity, and on this independent ground, deny its Application. See Admin code §16-509(a)(vi).

B. Frank Sciarrino, the Applicant's Principal, has Associated with a Person who has been Convicted of a Racketeering Activity.

The Commission may refuse to issue a registration to an applicant that has had "knowing association with a person who has been convicted of racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influence and Corrupt Organizations statue (18 U.S.C. § 1961 et seq.)..." See Admin. Code §16-509(a)(v).

As demonstrated in Part A above, Sciarrino has had a long term association with Asaro, who was convicted of engaging in a pattern of racketeering activity in 2008 and 2014. Asaro's criminal acts have included acting as an Accessory After the Fact to Murder, Arson, and Illegal Gambling.

The Commission should therefore find that the Applicant lacks good character, honesty, and integrity, and on this independent ground, deny its Application. See Admin. Code §16-509(a)(v).

C. Frank Sciarrino, the Applicant's Principal, is a Convicted Racketeer.

In 1993, Sciarrino pleaded guilty to two (2) counts of Knowingly and Willfully Transporting, and Causing to be Transported, in Interstate Commerce Merchandise of $5,000.00

or more, which he knew to be Stolen and Converted. See U.S.C. § 2314. These offenses, which relate to the interstate transportation of stolen property, fall within the meaning of "racketeering activity" under 18 U.S.C. § 1961.

Accordingly, under the circumstances, Sciarrino's conviction for conspiracy to transport stolen equipment means that his employment in the trade waste industry would have a result inimical to Local Law 42. The Commission should therefore find that the Applicant lacks good character, honesty, and integrity, and on this independent ground, deny its Application. See Admin. Code §16-509(a)(v).

D. Frank Sciarrino, the Applicant's Principal, has a Felony Conviction that Demonstrates he Lacks Good Character, Honesty and Integrity.

In making a determination regarding an applicant's good character, honesty and integrity in connection with an application for a license or registration, Admin. Code § 16-509(a)(iii) expressly permits the Commission to consider the conviction of an applicant for a crime which, considering the factors set forth in Correction Law § 753, would provide a basis under such law for the refusal of such license or registration. The factors in Correction Law § 753 to be considered are as follows:

> (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
>
> (b) The specific duties and responsibilities necessarily related to the license or employment 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 or 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 or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

See Correction Law § 753. A consideration of these factors favors denial of this Application.

Despite the public policy of New York State to encourage licensure of persons previously convicted of criminal offenses, the Application should be denied because there is a direct relationship between Sciarrino's criminal conviction and the specific approval sought. See Correction Law §§ 752(1) and 753(1)(a). First, Sciarrino was convicted of conspiring to transport stolen construction equipment, the very equipment used in demolition debris removal, which he now seeks a registration to haul. Moreover, Sciarrino is still involved in the same kind of trucking activities, those connected to the concrete industry, which he was involved in at the time of his conviction. Sciarrino has also spent most of his working life employed in industries with long histories of pervasive organized crime corruption, but only recently became subject to the scrutiny of a regulatory authority by applying for a trade waste registration with New York City. The fact that Sciarrino has long employed a known member of organized crime does not give the Commission any confidence that Sciarrino would not involve himself in further illegal activities.

Although seventeen (17) years elapsed between the conduct for which he was convicted and the filing of this Application, Sciarrino's recent testimony on the subject was not candid. Nor was Sciarrino's crime a youthful folly or indiscretion. See Correction Law § 753(1)(e). He was almost thirty (30) years old when his criminal acts occurred. Sciarrino's criminal acts were also serious enough to incur substantial punishment, including a sentence of fifteen (15) months incarceration followed by three (3) years of supervised release. See Correction Law § 753(1)(f). Finally, "it is beyond question that the government has a compelling interest in combating crime, corruption, and racketeering." SRI, 107 F. 3d at 998; see also Correction Law § 753(1)(h).

Accordingly, under all the circumstances, granting a trade waste registration to the Applicant would have a result inimical to Local Law 42 due to Sciarrino's conviction for conspiracy to transport stolen equipment. The Commission should therefore find that the Applicant lacks good character, honesty, and integrity, and on this independent ground, deny its Application. See Admin. Code §16-509(a)(iii).

E. The Applicant Failed to Provide Information and Documentation Required by the Commission.

"The commission may refuse to issue a license or registration to an applicant for such license or an applicant for registration who has knowingly failed to provide the information and/or documentation required by the commission pursuant to this chapter or any rules promulgated pursuant hereto." See Admin. Code §16-509(b); Attonito, 3 A.D.3d 415. By failing to respond to the Commission's requests, the Applicant has "knowingly failed to provide the information" required by the Commission. Therefore, the Commission denies the Applicant's registration application on this independently sufficient ground.

The Commission requested various payroll and employment records from the Applicant, which to date have not been produced. See April 1, 2014 letter from Commission Staff to the Applicant's attorney; May 6, 2014 letter from Commission Staff to the Applicant's attorney.

Beginning on April 1, 2014, the Commission requested documentation and information. First, the Applicant tried to delay production. Then, after delaying, the Applicant ultimately refused to provide the requested documents.

The Applicant was warned that its application could be denied for knowingly failing to provide the Commission with information. See May 6, 2014 letter from Commission Staff to Applicant's attorney. Despite these warnings, as of the date of this Notice, the Applicant has knowingly failed to provide information and documentation required by the Commission. For this independent reason, this Application should be denied.

V. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license or registration to any applicant that it determines is lacking in good character, honesty and integrity. The record as detailed above demonstrates that A & S Leasing Corp. falls short of that standard. Accordingly, based on the above independently sufficient reasons, the Commission denies A & S Leasing Corp.'s registration application.

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This denial is effective immediately. A & S Leasing Corp. may not operate as a trade waste business in the City of New York.

Dated: March 6, 2015

THE BUSINESS INTEGRITY COMMISSION

Daniel D. Brownell
Commissioner and Chair

Commissioner Kathryn Garcia
Department of Sanitation

Commissioner Mark Peters
Department of Investigation

Senior Director of Policy Shira Gans
(Designee)
Department of Consumer Affairs

Deputy Commissioner Andrew Schwartz
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Inspector John Denesopolis
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New York City Police Department