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 FANELLI TOP SOIL & RECYCLING, INC. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

Fanelli Top Soil & Recycling, Inc. ("Fanelli Top Soil" or the "Applicant") 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 and a registration to operate a trade waste business. 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.

Fanelli Top Soil applied to the Commission for an exemption from the licensing requirements and 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." See 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); compare Admin. Code § 16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity"). Local Law 42 makes clear that the Commission is not limited to consideration of the enumerated factors; the list is meant to be illustrative and not exhaustive.

Based upon the record as to the Applicant, the Commission denies Fanelli Top Soil and Recycling, Inc's application, for the following independently sufficient reasons:

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

   1. The Applicant has been found guilty of numerous administrative violations related to the trade waste industry.

   2. The Applicant failed to pay government obligations for which judgments have been entered.

B. The Applicant knowingly failed to provide information and documentation required by the Commission.

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.

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).

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

The Applicant was incorporated on December 15, 1967.[1] See New York State Department of State Division of Corporation record for Fanelli Top Soil. On September 29, 2006, the Applicant applied to the Commission for a registration to operate a trade waste business. See Fanelli Top Soil Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris ("Registration Application"). Pursuant to the investigation into the Applicant, on December 12, 2006, Victor Fanelli appeared before the Commission to give sworn testimony regarding the application. See Deposition transcript, dated December 12, 2006 ("Fanelli Tr."). On or about February 6, 2007, the Commission granted the Applicant a trade waste registration. See Fanelli Top Soil Registration Order ("Registration Order"). Fanelli Top Soil's registration was effective for two years, and expired on January 31, 2009. See Id. On February 3, 2009, the Applicant filed an application to renew its registration with the Commission.[2] See Fanelli Top Soil's Renewal Application for License or Registration as a Trade Waste Business, dated February 3, 2009 ("Renewal Application").

Since the Commission granted the Applicant's registration, the Applicant has repeatedly violated the rules and regulations of various government agencies, including the New York City Department of Sanitation ("DOS"), the New York City Department of Transportation ("DOT"), the New York City Department of Buildings ("DOB"), and the Commission.

First, on May 4, 2007, DOS charged the Applicant with operating a transfer station without a permit. Specifically, Fanelli Top Soil dumped solid waste consisting of dirt and rock at the Applicant's lot without the required permit. On July 24, 2007, the Applicant appeared for a hearing and was found guilty of the charge. A fine of $2,500.00 was imposed, which is fine is currently outstanding. See DOS violation #0145867509.

Again, on September 30, 2008, the Applicant was observed operating a transfer station without a permit. Specifically, Fanelli Top Soil dumped dirt and rock onto the Applicant's lot. On May 13, 2009, the Applicant appeared for a hearing and was found guilty. A fine of $2,500.00 was imposed, which is currently outstanding. See DOS violation #0160109510. As a result of the above activity, on the same day, the Applicant was also charged with illegal dumping, dumping approximately 14 cubic yards of dirt onto the Applicant's lot without the required DOS permit. On May 13, 2009, the

[1] On July 26, 2006, the Applicant changed its name from Fanelli Top Soil, Inc. to Fanelli Top Soil & Recycling, Inc. See Certificate of Amendment of Certificate of Incorporation.

[2] On November 24, 2008, the Commission notified the Applicant that its Registration was scheduled to expire on January 31, 2009, and that it was required to file a renewal application with the Commission. The Commission also advised the Applicant that if it failed to file a renewal application by January 31, 2009, it would be "deemed to be engaging in unlicensed trade waste removal activity and will be subject to administrative, civil, and/or criminal penalties." See letter dated November 24, 2008. The Applicant failed to contact the Commission and although the Applicant was directed to submit the application by January 31, 2009, and failed to do so, the Commission accepted the late filing. A violation was issued related thereto. See Commission Notice of Violation TW-4281; See infra at 10.

Applicant was found guilty of the charge. A fine of $1,500.00 was imposed, which is currently outstanding. See DOS violation #0170496013.[3]

Additionally, the Applicant failed to contact and notify the Commission of the above mentioned DOS and DOT violations as required. See RCNY §2-05(b)(iii). Therefore, on December 2, 2008, the Commission charged the Applicant with four counts of failing to notify the Commission within ten calendar days of a material change in information submitted in the application. On August 27, 2009, the Commission also issued various other violations against the Applicant for: operating an unlicensed or unregistered trade waste removal business; failing to notify the Commission of an employee arrest;[4] and providing false information to the Commission in connection with its renewal application. The Applicant failed to appear at a scheduled hearing for all of the violations. Therefore, Fanelli Top Soil was found guilty of each violation and fined. Those fines totaling $85,000.00 are currently outstanding. See Commission Notices of Violation and Default Judgments, TW-3126, TW-3127, TW-3128, TW-3129, TW-3515, TW-3516, and TW-4281

In addition to the above violations, the Applicant incurred numerous other violations from July 2007 to September 2009. On July 18, 2007, the DOT charged the Applicant with failing to have street protection under a commercial refuse container. See DOT violation #0161436936. On September 15, 2008, the Department of Environmental Protection ("DEP") charged the Applicant with not conforming to approved plans. See DEP violation #034694826. On August 28, 2008, the DOB charged the Applicant with failing to post a permit. See DOB violation #034694648N. On July 7, 2008, the DOT charged the Applicant with failing to have street protection under a commercial refuse container. See DOT violation #0162318467. On March 3, 2009, the Commission charged the Applicant with failing to notify the Commission of a lot where trucks and machinery are stored. It was also charged with failing to clean up spilled dirt from a city roadway. See Commission Notices of Violation, TW-3515 and TW-3516. On September 1, 2009, the DEP issued a violation for unlawfully constructing, enlarging, altering, repairing, moving, demolishing, removing or changing the use or occupancy of a building or structure in the city. See DEP violation #034771771P. The Applicant failed to appear before a scheduled hearing for each of the violations. Therefore, Fanelli Top Soil was found guilty of each violation and fined. Those fines, totaling $27,970.00, are currently outstanding.

In addition to the above violations, the Worker's Compensation Board of New York State Applicant obtained a judgment against the Applicant for $28,000.00, which is currently outstanding. Furthermore, two New York State Tax Warrants were filed against

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[3] Notably, when Fanelli testified before the Commission on December 12, 2006, he was questioned about storing, accepting, and stockpiling debris at his business lot. Fanelli testified that he neither brought nor accepted any material into his lot since his father passed away in 1998. He testified as to where he dumped the material that the Applicant collected from excavation sites, but failed to mention his own lot. He also testified that he wanted to clear out all the debris at his own lot so he could develop the lot for homes. Notwithstanding this testimony, as indicated above, Fanelli Top Soil did in fact dump and store trade waste in its yard, in violation of DOS' regulations. See Fanelli Tr. at 26, 31, 40-42, 45-46, and 49.

[4] On or about July 15, 2008, Michael Catanese, an employee of Applicant since 2006, was arrested in Richmond County, New York, and charged with unlawful possession of marijuana in violation of Section §221.05. and §221.10. of the Penal Law.

the Applicant on January 26, 2010 and January 27, 2010, totaling $4,738.38, which are currently outstanding.

In total and as listed below, Fanelli Top Soil currently owes approximately $128,208.38 in government judgments and violations.

Environmental Control Board:

- Violation Number: 034694648N
- Violation Date: 08/28/2008
- Debt Owed: $500.00

- Violation Number: 0170496013
- Violation Date: 09/30/2008
- Debt Owed: $1,500.00

- Violation Number: 0145867509
- Violation Date: 05/04/2007
- Debt Owed: $2,500.00

- Violation Number: 0161436936
- Violation Date: 07/18/2007
- Debt Owed: $470.00

- Violation Number: 0162318467
- Violation Date: 07/07/2008
- Debt Owed: $500.00

- Violation Number: 0160109510[5]
- Violation Date: 09/30/2008
- Debt Owed: $2,500.00

- Violation Number: 034694826R[6]
- Violation Date: 09/15/2008
- Debt Owed: $2,500.00

- Violation Number: 034771771P[7]
- Violation Date: 09/01/2009
- Debt Owed: $4,000.00

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[5] According to the Applicant's response to the Staff's denial recommdenation, as discussed infra 11, the Applicant is addressing this violation, but no proof has been submitted to support this asseration and as of June 8, 2010 full payment as indicated above is due.

[6] According to the Applicant's response to the Staff's denial recommdenation, as discussed infra 11, the Applicant is addressing this violation, but no proof has been submitted to support this asseration and as of June 8, 2010 full payment as indicated above is due.

[7] According to the Applicant's response to the Staff's denial recommdenation, as discussed infra 11, the Applicant is addressing this violation, but no proof has been submitted to support this asseration and as of June 8, 2010 full payment as indicated above is due.

Business Integrity Commission:

- Violation Number: TW-3126[8]
- Debt Owed: $10,000.00

- Violation Number: TW-3127[9]
- Debt Owed: $10,000.00

- Violation Number: TW-3128
- Debt Owed: $10,000.00

- Violation Number: TW-3129
- Debt Owed: $10,000.00

- Violation Number: TW-3515
- Debt Owed: $10,000.00

- Violation Number: TW-3516
- Debt Owed: $10,000.00

- Violation Number: TW-4281
- Debt Owed: $25,000.00

Workers' Compensation Board of New York State

- Filing Number: 325947
- Debt Owed: $28,000.00

New York State Tax Warrant

- Warrant ID:E-0255994792-W001-3
- Debt Owed: $3,910.99

- Warrant ID: E-025994792-W002-7
- Debt Owed: $799.39

Additionally, on July 20, 2009, a Commission staff member informed the Applicant in writing that it owed numerous unsatisfied judgments to governmental authorities. See Letter to Victor Fanelli dated July 20, 2009 ("Letter dated July 20, 2009"). In that letter, the Commission listed the above-referenced Environmental Control Board violations, provided the Applicant with supporting documentation, and advised the Applicant that before the application could be processed further, the judgments must be resolved.[10] The Applicant's deadline to provide proof that the judgments had been

[8] On March 24, 2009, a Default Decision and Order for TW-3126 was entered for $10,000.00. On July 27, 2009, the decision was vacated and remanded for a new hearing. On October 22, 2009, the default decision and Order was reinstated because the Applicant again failed to appear for the hearings. See Default Decision and Order from Administrative Law Judge M. Mirro

[9] On March 24, 2009, a Default Decision and Order for TW-3127 was entered for $10,000.00. On July 27, 2009, the decision was vacated and remanded for a new hearing. On October 22, 2009, the default decision and Order was reinstated because the Applicant again failed to appear for the hearings. See Default Decision and Order from Administrative Law Judge M. Mirro

[10] Excluding Environmental Control Board violation 034771771P

satisfied or otherwise resolved was August 26, 2009. See Id. As of the date of this denial decision, the judgments remain unresolved.

Furthermore, in a letter dated July 20, 2009, the Applicant was directed to contact the Commission regarding multiple unsatisfied Commission violations. The Commission issued numerous violations against Fanelli Top Soil between December 2, 2008 and August 27, 2009.[11] Fanelli Top Soil failed to appear for the scheduled hearings related to those violations.

By letter dated August 18, 2009, a Commission staff member informed the Applicant in writing that the violations issued by the Commission against Fanelli Top Soil had been subject to Default Decisions and Orders by the New York City Department of Consumer Affairs, Adjudication Division. See Letter to Fanelli Top Soil dated August 18, 2009. The letter stated:

> "Please be advised that failure to submit payment to the Commission by September 1, 2009 or failure to contact the Commission by the same will result in the imposition of additional penalties, including, but not exclusively, the issuance of additional violation, the imposition of additional monetary fines, and/or the denial of your trade waste registration renewal application which is currently pending before the Commission.

As of September 1, 2009, the Applicant failed to submit any payments or respond to the Commission. See Email dated September 1, 2009.

On March 8, 2010, the staff issued a twelve-page recommendation that Fanelli Top Soil Renewal Application be denied (the "Recommendation"). On March 8, 2010, the Commission sent the Recommendation to the Applicant's mailing address via US mail. See Letter dated March 8, 2010. 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 12. On March 22, 2010, the Applicant, through its attorney, requested an extension of time to submit a response to the Recommendation. That request was granted, and the Applicant was given until April 6, 2010 to submit a response. Again, on April 15, 2010, the Applicant, through its attorney, requested another extension of time to submit a response to the Recommendation. The Commission granted the request, and gave the Applicant until April 23, 2010 to submit a response.

On April 20, 2010, the Applicant submitted a response to the Recommendation, which consisted solely of a two-page letter from the Applicant's attorney (the "Response"). In sum, the Response stated that the Applicant did not know about the numerous violations issued by various government entities, that the Applicant was "currently in the process" of addressing three of the violations, and requested additional information about the violations.[12] See Response. On April 26, 2009, by regular mail, a

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[11] See supra at page 8, 9, and 10.

[12] The Response also stated that the principal is in the process of getting a divorce and it has hampered his ability to pay the outstanding fines. However, no proof was submitted: 1) to substantiate the Applicant's financial situation; 2) to demonstrate that the Applicant has contacted any agency in an attempt to work out

Commission staff member provided the Applicant with the letter dated July 20, 2009, the letter dated August 18, 2009 and the Commission Notices of Violation and Default Judgments for TW-3126, TW-3127, TW-3128, TW-3129, TW-3515, TW-3516 and TW-4281.

The Commission has carefully considered the staff's Recommendation and the Applicant's Response. 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 and therefore, Fanelli Top Soil'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. The Applicant has been Found Guilty of Numerous Administrative Violations Related to the Trade Waste Industry.

As demonstrated above, the Applicant has repeatedly disregarded the rules and regulations of various administrative agencies as evidenced by the Applicant being found guilty of numerous administrative violations. This deliberate disregard for government authority, laws, and rules and regulations establishes that the Applicant has failed to demonstrate good character, honesty, and integrity, the requisite standard for a registration. Therefore, the Commission denies Fanelli Top Soil's application for this independently sufficient reason.

2. The Applicant Failed to Pay Government Obligations for which Judgments have been Entered.

As demonstrated above, the Application has had $128,208.38 of judgments entered against it by numerous governmental authorities. The Commission may deny a registration application when the applicant has failed "to pay any tax, fine, penalty, 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 ...", and the Commission may consider such when determining an applicant's eligibility for a registration. See NYC Admin. Code §16-509(a)(x). Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008).

In the Response the Applicant does not address or refute that it has been found guilty of numerous administrative violations related to the trade waste industry. In an unsworn statement from the Applicant's attorney, the Applicant simply states that it is in the process of addressing some of these outstanding government judgments. As of June 9, 2010 and after numerous time extensions, none of the judgments or violations had been resolved, including the $85,000.00 of judgments to the Commission itself. The Applicant's failure to satisfy numerous debts for which judgments have been entered is indicative of the Applicant's lack of good character, honest, and integrity and is a

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a payment plan or extension of time to pay; or 3) that the Applicant responded to the Commission's requests for information related to the outstanding judgments. See Response.

sufficient independent ground for denial of its registration application. Therefore, the Renewal Application is denied.

B. The Applicant Knowingly 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).

The Applicant was directed to submit proof of satisfaction for DEP violations, Commission of Labor State of New York judgments, Commission violations, and New York State tax warrants by August 26, 2009. The Applicant failed to do so.

In the Response the Applicant claims it was unaware of the numerous Environmental Control Board and Commission violations, however, the Applicant did not submit any support for this assertion. Furthermore, as indicated supra at 10, the Commission notified the Applicant about these judgments in writing on July 20, 2009. Moreover, on July 29, 2009, the Applicant responded to the letter dated July 20, 2009, which included copies of each violation, indicating that the Applicant in fact received such notice of the violations. See Letter dated June 29, 2009.

As of the date of this denial decision, Fanelli Top Soil has not submitted any proof refuting the failure to provide information and documentation required by the Commission.[13] Therefore, the Applicant has "knowingly failed to provide the information" required by the Commission. See Admin. Code §16-509(b). The Applicant's Renewal Application is denied based on this independently sufficient ground.

III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license, or to refuse to grant an exemption from the license requirement and issue a registration, to any applicant that it determines lacks good character, honesty and integrity. The record as detailed above demonstrates that the Applicant falls short of that standard. Accordingly, the Commission denies the Renewal Application of Fanelli Top Soil & Recycling Inc.

[13] The Commission also requested that the Applicant provide proof of satisfaction for open New York State tax warrants and proof of a valid driver license for one of its divers. On July 29, 2009, the applicant provided that information.

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.

June 28, 2010

THE BUSINESS INTEGRITY COMMISSION

Michael J. Mansfield
Commissioner/Chair

John Doherty, Commissioner
Department of Sanitation

Andrew Eiler, Director of Legislative Affairs (designee)
Department of Consumer Affairs

Jayne Naberezny, Inspector General (designee)
Department of Investigation

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

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