THE CITY OF NEW YORK
BUSINESS INTEGRITY COMMISSION
100 CHURCH STREET, 20TH FLOOR
NEW YORK, NEW YORK 10007

DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENYING THE RENEWAL APPLICATION OF JUDA CONSTRUCTION, LTD. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

Juda Construction, Ltd., (the "Applicant" or "Juda"), has applied to the New York City Business Integrity Commission ("Commission"), formerly named the New York City Trade Waste Commission, pursuant to Local Law 42 of 1996, for renewal of its exemption from licensing requirements for the removal of construction and demolition debris. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a). Local Law 42 was enacted to address pervasive organized crime and other corruption in the commercial carting industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

Juda applied to the Commission for renewal of its registration enabling it to operate as a trade waste business "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation" – a type of waste commonly known as construction and demolition debris, or "C & D." Admin. Code §16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for registration. See id. If, upon review and investigation of the application, the Commission grants the Applicant a registration, the Applicant becomes "exempt" from the licensing requirement applicable to businesses that remove other types of waste. See id.

In determining whether to grant a registration to operate a construction and demolition debris removal business, the Commission considers the same types of factors that are pertinent to the Commission's determination whether to issue a license to a business seeking to remove other types of waste. See 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). Central to the Commission's investigation and determination of a registration application is whether the applicant has business integrity. See 17 RCNY §1-09

(prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); Admin. Code §16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity"); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008).

Based upon the record as to the Applicant, the Commission, for the following independently sufficient reasons, denies Juda's application and refuses to issue Juda a registration:

A. The Applicant failed to demonstrate eligibility for a trade waste registration as it violated the terms and conditions of its registration:

1. **The Applicant knowingly associated with convicted racketeers;**

2. **The Applicant maintained a prohibited business relationship with both Joseph Attonito and Thomas Attonito;**

3. **The Applicant terminated the monitor without the Commission's permission and consent; and**

4. **The Applicant failed to supplement its application materials and timely notify the Commission of material changes.**

B. The Applicant lacks good character, honesty and integrity as its corporate President, Christopher Uzzi, is a convicted racketeer.

C. The Applicant lacks good character, honesty and integrity as its Principals made false and misleading statement to 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. See Attonito v. Maldonado, 3 A.D.3d 415, 771 N.Y.S.2d 97 (1st Dept. 2004).

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs ("DCA") for the licensing and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code §16-503. "Trade waste" is broadly defined and specifically includes "construction and demolition debris." Id. §16-501(f)(1). The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997). The United States Court of Appeals has definitively ruled that an applicant for a trade waste removal license under Local Law 42 has no

entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997); Attonito, 3 A.D.3d 415.

Local Law 42 specifically permits the Commission to refuse to issue a registration to an applicant "who has knowingly failed to provide the information and/or documentation required by the commission pursuant to [Title 16 of the Administrative Code or any rules promulgated thereto]" or "who has otherwise failed to demonstrate eligibility for such license." Admin. Code §16-509(b). Applicants who knowingly fail to provide information required by the Commission (whether they fail to provide the information altogether or they provide false and misleading information) fall under the first prong. In Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); *leave denied*, 2 N.Y.3d 705 (2004), the Appellate Division affirmed the authority of the Commission to "review" exemption applications, to fully investigate any matter within its jurisdiction and to deny such applications in those cases "where the applicant fails to provide the necessary information, or knowingly provides false information." It further affirmed the authority of the Commission to investigate the accuracy of the information provided in an application. Id.

Applicants who fail to demonstrate good character, honesty and integrity using the criteria by which license applicants are judged fall under the second prong of §16-509(b). While the Appellate Division in Attonito did not directly address the second prong, by affirming the Commission's authority to investigate matters within the trade waste industry, it necessarily follows that the Commission need not ignore the results of its investigation that bear on an applicant's good character, honesty and integrity. Id.; accord Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008) (Commission denial not arbitrary and capricious where based on a criminal conviction, identification as an organized crime associate, and false and misleading statements). Accordingly, the Commission evaluates whether applicants meet the fitness standard using the same criteria upon which license applicants may be denied, including:

1. failure by such applicant to provide truthful information in connection with the application;

2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;

3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;

4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;

5. commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. § 1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;

6. association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;

7. having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;

8. current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;

9. the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;

10. failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Admin. Code § 16-509(a)(i)-(x). While the presence of one of the above factors in the record of a registration applicant would not necessarily require a denial as a matter of law, the Commission may consider such evidence as a factor in determining overall eligibility.

II. DISCUSSION

On or about June 3, 2004, Abernathy Trucking, Ltd. applied to the Commission for an exemption from licensing requirements and a registration to operate as a trade waste business

pursuant to Local Law 42 of 1996.[1] See Abernathy Trucking, Ltd.'s Application for Exemption from Licensing Requirement for Removal of Demolition Debris ("Registration Application"). The sole principal listed on the Registration Application was Nicholas Paniccia ("Paniccia"). See Registration Application at 3, 9. Paniccia certified that the information contained in the Registration Application was accurate and truthful on June 3, 2004. See id. at 20.

The Commission's staff conducted a background investigation of the Applicant and its disclosed principal and determined that Paniccia was closely associated with Joseph Attonito ("Joseph A."), Thomas Attonito ("Thomas A."), and Christopher Uzzi ("Uzzi"). Joseph A. and Thomas A. were both the principals of Whitney Trucking, Inc. ("Whitney"), a company that had previously applied to the Commission for a registration. Uzzi, who is the Attonitos' long time business partner and friend, was closely associated with Whitney and had owned several other C&D hauling and brokerage companies. See Transcript of Paniccia's Deposition ("Paniccia Deposition") at 48-49; Transcript of Thomas A.'s Deposition ("Thomas A. Deposition") at 28. On March 23, 2004, the Commission issued a finding that Whitney lacked good character, honesty and integrity, and denied its application for a registration. See Commission's Decision Denying Whitney's Application for Exemption Application ("Whitney Denial Decision").[2]

In order to determine the extent of Paniccia's relationship with Joseph A., Thomas A. and Uzzi, the Commission ordered Paniccia to provide testimony under oath on November 4, 2004. During Paniccia's deposition he testified that he had several past and existing business relationships with Joseph A., Thomas A. and Uzzi. Among the many business relationships, Paniccia testified that Joseph A., Thomas A., Uzzi and he were formerly partners in Juda, Morgan Excel Trucking, Inc. ("Morgan Excel"), Whitney, and Whitney Contracting, Inc. "(Whitney Contracting"); however, Paniccia testified that he was divested from all of these business relationships through the exchange of his interests in Whitney Contracting and Morgan Excel for sole ownership of Juda.[3] See Paniccia Deposition at 69-72. In his deposition Paniccia stated that that his only remaining business relationships with Joseph A. and Thomas A. were: (1) a share of a company called Fullerton Land Development, Ltd. ("Fullerton") and (2) that he purchases fuel from Joseph A.'s company, Emperor Industries, Ltd. ("Emperor").[4] See Paniccia

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[1] The Applicant subsequently changed its company name to Juda Construction, Ltd. See infra at 8.

[2] The Whitney Denial Decision cited the following grounds: Whitney and its principals provided materially false and misleading information to the Commission; Whitney's president, Thomas A., was convicted of Perjury in the First Degree, and Whitney's vice president, Joseph A., was indicted for Offering a False Instrument for Filing in the First Degree; Whitney engaged in long term unregistered operation in New York City; a loaded, unregistered and illegally altered pistol was found in one of the Whitney's office desk drawers; Joseph A. and Uzzi had long criminal histories including convictions for racketeering and extortion, pursuing a scheme to defraud, and joining a conspiracy to commit mail fraud; Whitney was under investigation for criminal charges for illegal dumping and operating an illegal waste transfer station; and Whitney obstructed governmental administration by failing to permit government inspectors to enter and inspect the site. See Whitney Denial Decision.

[3] In the 1990's Joseph A., Phil Bellino and Paniccia were partners in P.A.B. Development Corp. which dissolved following a money dispute. See Paniccia Deposition at 46. Following that venture, Joseph A., Uzzi and Paniccia became partners in Morgan Excel, which was a successor trucking company to Paniccia's N.S.E. Equipment, Inc. ("N.S.E."). See id. at 59-60. Prior the creation of Morgan Excel, Joseph A., Thomas A. and Uzzi would broker trucking jobs to N.S.E. See id. at 48-51. Additionally, Paniccia, Joseph A., Thomas A., and Uzzi owned common interests in Juda, Whitney Contracting, Fullerton, Whitney and Emperor Industries, Ltd. See infra at 9.

[4] Fullerton owns 300 Fullerton Avenue, Yonkers, NY, which was Juda's business address on their Registration Application.

Deposition at 18, 127. Paniccia also stated that Joseph A. and Thomas A. no longer had any interest Juda. See id.

Based on these representations, on or around August 2005, the Commission exercised its discretion and issued Juda a Registration Order ("Registration Order") subject to several conditions and restrictions.

Prior to executing the Registration Order, Paniccia requested that the Commission amend his application and change the company name from Abernathy to Juda, so that his Westchester Solid Waste Commission Registration Order and his Commission Registration Order were in the same company name. See Letter from Clement S. Patti Jr., Esq., August 25, 2005. The Commission granted the request and amended his application.

On August 25, 2005, Paniccia signed the Registration Order, thereby consenting to the terms and conditions therein. The Registration Order was effective September 1, 2005. The relevant conditions of the Registration Order are:

> 2. The Applicant shall not knowingly associate with any member or associate of organized crime or any racketeer in any manner, whether the association is related to the trade waste removal industry or not related to the trade waste removal industry.
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> 6. In addition to any other obligation to supplement its Application materials, the Applicant shall timely notify the Commission of any material changes in the information set forth in its Application or other submitted materials....
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> 8. The Applicant acknowledges that on March 23, 2004, the Commission issued a finding that Joseph Attonito and Thomas Attonito were principals of Whitney Trucking, Inc. ("Whitney") and that Whitney lacked good character, honesty and integrity. The Applicant has previously represented to the Commission that the Applicant conducts business with Joseph Attonito (or a company owned or operated by Joseph Attonito) and has testified that the business dealings are limited to: (a) the rental of property at 300 Fullerton Avenue from Fullerton Land Development Corp., an Attonito company and (b) the purchase of fuel from Emperor Industries, Ltd., an Attonito company. The Applicant acknowledges that it will not employ or otherwise retain the services of, or do business with Joseph Attonito or Thomas Attonito, except as disclosed above.
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> 15. Within thirty days after the date of this Order, the Applicant shall have in place a monitor, with the mission of monitoring the good character, honesty, and integrity of the Applicant and with the powers described below:

b. The selection, continued retention, discharge, and replacement of the MONITOR shall be in the sole and unreviewable discretion of the Commission, and the Applicant waives any right to seek judicial review of the Commission's exercise of that discretion.

d. [W]ith respect to new or prospective employees of the Applicant who are required to file a disclosure form under Local Law 42, the Applicant shall give the MONITOR at least 10 business days' advance written notice of such employment....

f. All personnel employed by the Applicant, shall give full cooperation to the Monitor....

In accordance with the conditions of the Registration Order, on or about September 9, 2005, Juda retained FJL Associates, LLC ("FJLA" or "Monitor") as their monitoring firm. See Juda Retainer Agreement with FJLA, September 7, 2005. FJLA's mission was to oversee Juda's business interactions and to enforce the terms and conditions of the Registration Order.

In the course of its investigation, FJLA found significant evidence of prohibited business associations between the Applicant, Joseph A., Thomas A. and Uzzi. FJLA found documents which demonstrated that Paniccia, Thomas A. and Uzzi were actually still partners in Juda, contrary to Paniccia's sworn statements.[5] FJLA reviewed a document dated February 23, 2005 and titled "Agreement" which memorialized Joseph A.'s divestment from Juda, Whitney Contracting, Fullerton, Whitney and Emperor through the sale of his shares to Paniccia, Thomas A. and Uzzi ("Purchasers") [6] for $2,600,000.00[7] payable over a period of 72 months ("Divestment Agreement").[8] Additionally, the Divestment Agreement obligated the Purchasers to employ one truck from Joseph A.'s sister's company FMG Industries, Inc., ("FMG") at that highest available rate and to provide for the truck's maintenance ("FMG Condition").[9]

FJLA also reviewed a document dated April 6, 2005 and titled "Release" which documented the payment of $2,622,143.00 to Joseph A. by the Purchasers thereby satisfying the financial condition of the Divestment Agreement ("Release"). Accompanying the Release were

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[5] Paniccia made statements about his sole ownership of Juda: 1) in his deposition; 2) in his sworn affidavit dated December 13, 2005; 3) in his sworn affidavit dated February 15, 2005; and 4) in interviews with FJLA.

[6] The spouses of Uzzi, Thomas A. and Joseph A. were also parties to the Divestment Agreement.

[7] It is interesting to note that if all payments were made according to the terms of the Divestment agreement a total of only $2,476,189.44 would be remitted.

[8] The Divestment Agreement also included conditions that the Applicant provide for telephone service and health insurance to Joseph A. and his wife through the payment period and that the Applicant pay a severance payment to legal counsel Joanne Pisano, Esq. should her services be terminated.

[9] FMG is owned by Joseph A.'s sister Francine Gannon who is married to Frank Santoro. As of the date of this decision, Santoro was serving a six year sentence pursuant to his guilty plea to Manslaughter in the First Degree for the slaying of an organized crime associate, Thomas Pennini. See Chrisena Coleman, Guilty Plea in Mobster's Shooting, New York Daily News, February 12, 2008, at 4. In 1983, Frank Santoro was convicted by the United States Department of Justice of Gun Smuggling. See Francine Gannon's Deposition Transcript at 43; see Bob Kappstatter, Cops, Mob in Race to find killer, New York Daily News, July 22, 2002, at 25. Notably, while the Divestment Agreement demonstrates an on-going relationship, it also shows that Paniccia's sworn statements that he was the sole owner of Juda were false. See infra at 17.

four checks drawn from the Purchasers' personal checking accounts: Uzzi wrote checks in the amount of $700,000.00 and $400,000.00; Paniccia wrote a check in the amount of $922,143.00 and Thomas A. wrote one check in the amount of $600,000.00.[10]

This payment released the Divestment Agreement's financial condition, but it did not release the FMG Condition. The release of the FMG Condition was memorialized in a document dated December 2006 and titled "Release" ("Final Release"). In consideration for the Final Release, the Purchasers paid Joseph A. an additional $230,000.00, and Juda purchased FMG's truck and forgave any outstanding repair bills.[11]

When FJLA confronted Paniccia about Thomas A.'s and Uzzi's apparent continued ownership of Juda, he reiterated that he was the sole owner of Juda and blamed poor drafting by his attorney Joanne Pisano.[12] FJLA also interviewed Joseph A., Thomas A., and Uzzi, who all corroborated Paniccia's statement. Thomas A. and Uzzi stated that the only business ownership interest that they shared with Paniccia was the ownership of Fullerton.[13] See FJLA's First Report at 8. On December 13, 2005, Paniccia executed an affidavit reaffirming that he was the sole owner and principal of Juda and that the Applicant did not transact business directly or indirectly with Joseph A. or Thomas A. See Paniccia's Affidavit, December 13, 2005. Evidence that contradicts these statements was later found.

On January 19, 2006, Pure Earth, Inc. ("Pure Earth")[14] acquired Juda, Whitney Contracting and Uzzi's American Transportation and Disposal Company, Inc. ("American Transportation").[15] See Juda's Stock Purchase Agreement, January 19, 2006 ("Juda Stock Purchase Agreement"). As a condition of the acquisition, Paniccia and Uzzi were made officers and principals of Pure Earth. See Paniccia's Employment Agreement; Uzzi's Employment

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[10] It is interesting to note that the total of these payments equals $2,622,143.00 and that the Release states that the amounts of $51,587.28 and $2.106.00 had been deducted from the total due under the Divestment Agreement.

[11] FJLA was told that the money paid to secure the Final Release came from the personal funds of the Purchasers. However a review of the documentation relating to the transaction shows that Pure Earth actually purchased the truck from Thomas A.'s company CJT Construction, LTD ("CJT") for $60,000.00 through a wire transfer to Thomas A.'s personal bank account. See Bill of Sale; see Bank of America Wire Transfer.

[12] Ms. Pisano had previously represented the Attonitos before the Commission in connection with Whitney's registration application.

[13] Although Uzzi disclosed that his companies American Transportation & Disposal Services and Whitney Contracting leased trucks from Juda.

[14] Pure Earth describes itself as a "diversified environmental company that provides... integrated transportation, disposal, recycling, consulting, engineering, and related services, enabling the beneficial reuse of soils and industrial waste streams into approved disposal facilities and Brownfield sites." See Pure Earth, SEC Form 10Q, September 20, 2009 at 29.

[15] These entities were acquired by Mark Alsentzer doing business as the South Jersey Development Corporation, a company originally named Info Investor, Inc. (whose purpose was television infomercial marketing), which after a series of complex transactions would ultimately become a wholly owned subsidiary of Pure Earth, Inc. See Pure Earth, SEC Form 10/A, August 8, 2008. Under the terms of the Purchase Agreement, Juda was purchased for approximately $600,000.00 in stock. See Juda's Stock Purchase Agreement. Additionally, Paniccia signed an Employment Agreement which stated that he would be employed as the "President" of Juda or "Vice President" of Pure Earth for a period of five years. See Paniccia's Employment Agreement. Uzzi's company, American Transportation was also acquired by South Jersey Development Corporation for $1,250,000.00 on the same date, and that Uzzi executed an employment agreement with terms similar to the Paniccia Employment Agreement, and he would be employed as the "President" of Pure Earth for a period of five years. See Uzzi's Employment Agreement.

Agreement. The documents relating to this acquisition further demonstrate the Thomas A. and Uzzi's continuing involvement with Juda.

On April 3, 2006, FJLA interviewed Uzzi, Pure Earth's president, and William LeVan, ("LeVan") Pure Earth's Vice President of Acquisitions, regarding the acquisition of Juda.[16] In the interview both Uzzi and LeVan, corporate officers of Pure Earth, represented that the Joseph A. and Thomas A. had no involvement with or ownership of Pure Earth or any of its affiliates including American Transportation. Moreover, Uzzi acknowledged that if Joseph A. or Thomas A. had involvement in Pure Earth, it would likely be a violation of Juda's Registration Order. See FJLA's Second Report at 6.

In an August 16, 2006 meeting, Uzzi directly contradicted his (and LeVan's) statements by disclosing that Thomas A. had a long term and ongoing business relationship with American Transportation in violation of the Registration Order. Uzzi justified Thomas A.'s employment by stating that Thomas A. had the ability to obtain large contracts from Laquila Construction, Inc. ("Laquila").[17] However, Uzzi attempted to minimize the scope of Thomas A.'s employment and duties by claiming that Thomas A. had no direct business relationship with Juda, that he worked exclusively with American Transportation and that he was paid on a commission basis.[18]

The evidence actually shows that Thomas A.'s business relationship with Pure Earth, American Transportation and Juda was more extensive than Uzzi had represented. First, Thomas A. executed a consulting agreement with Pure Earth on the same day that Pure Earth acquired Juda and American Transportation and entered into employment agreements with Paniccia and Uzzi. Further Thomas A.'s consulting agreement contains essentially the same terms and language as Paniccia's Employment Agreement.[19] These facts suggest that Thomas A.'s employment at Pure Earth was directly related to the acquisitions and to Uzzi's and Paniccia's employment.

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[16] On January 16, 2007, LeVan was implicated with five other individuals in a 40 count indictment unsealed by the United States Attorney of the Eastern District of Pennsylvania charging LeVan with two counts of aiding, abetting and willfully causing the making of false statements to a federally insured financial institution in violation of 18 U.S.C. §§1014 and 2, for submitting forged and false tax returns in multiple loan applications seeking $1,770,000.00 in loans. LeVan's submitted these forged tax returns knowing that he had not filed federal taxes for years 1999-2005. On January 25, 2007, LeVan pleaded guilty to the two counts and on November 20, 2007, and he was sentenced to one day incarceration and a term of probationary supervision. Following LaVan's indictment, he continued to serve as Pure Earth's "Director of Business Development" and his wife Julie Snell LaVan, Esq. continued to serve as Pure Earth's in-house corporate counsel, regardless of the fact that Alsentzer and Kopenhaver described her as a recent law graduate that did not have the experience needed for the position. See FJLA's Fifth Report at 4.

[17] On March 23, 2004 the Commission issued a decision denying the exemption application of Laquila Construction, Inc. and its affiliated companies. Among the grounds stated was knowing association with several associates of organized crime groups and evidence implicating the Laquila in the commission of racketeering activities. See Commission's Decision Denying Laquila's Application for Exemption Application.

[18] Uzzi's attempt to justify and minimize Thomas A.'s employment with Pure Earth is irrelevant. Upon completion of the acquisition, Pure Earth became the Applicant before the Commission by operation of Admin Code §16-501(a) and the Registration Order. Therefore, after January 19, 2006, any business relationship between Pure Earth (and its affiliates) and Thomas A. was strictly prohibited by the Registration Order. See Registration Order at 5.

[19] Thomas A. was paid a salary of approximately $208,000 per year and his bonus was dependent on American Transportation's performance. These terms and many others are identical to Paniccia's Employment Agreement.

Second, in Thomas A.'s deposition on February 15, 2005, he stated that he shared the management responsibilities of American Transportation's operations with Uzzi, for which American Transportation paid Thomas's A.'s company CJT Construction, Ltd. ("CJT") between $12,000.00 and $15,000.00 per month.[20]

Third, FJLA's June 6, 2007 interview of Mark Alsentzer ("Alsentzer"), Director of Pure Earth, and Brent Kopenhaver ("Kopenhaver"), CEO and CFO of Pure Earth, demonstrated that Thomas A. has the authority to exercised direct control of Juda. In the interview, Alsenzer remarked that initially he was skeptical that about Thomas A.'s ability to obtain contracts, but his opinion changed when Thomas A. obtained a major contract from Laquila. He stated that he was not only impressed that Thomas A. had obtained a significant contract, but that he was also impressed with Thomas A.'s ability to order and coordinate trucks at the jobsite. Thomas A.'s control of the trucks at the jobsite not only demonstrates that Thomas A. was playing a far larger roll than merely obtaining contracts, it also revealed that Thomas A. was still exercising direct managerial control over Juda, as Juda provided, when feasible, all the trucking services for its sister company, American Transportation. See FJLA's Fifth Report at 3.

On August 23, 2007, Juda filed a Renewal Application with the Commission. Juda was allowed to operate pending the Commission's investigation of their renewal application. Prior to Juda's registration expiring, the Commissioner executed an Order to extend all terms and conditions Juda's Registration Order, including the condition requiring oversight by FJLA until January 31, 2008. On November 30, 2007, Juda informed the Commission that it was ceasing its trucking operations in New York City and it attempted to withdraw its Renewal Application. See Juda Construction Letter, November 29, 2007. On the same day, Special Counsel Levine responded to Juda stating that the Commission accepted the return of Juda's license plates and the surrender of its registration certificate; but that Juda's request to withdraw its pending application was rejected. See Letter to Alan Bahn, Esq., November 29, 2007.

Shortly thereafter, on or about December 12, 2007, Pure Earth formally terminated FJLA's monitoring services without the Commission's permission or consent. A correspondence from Kopenhaver on Pure Earth's letterhead stated:

> Per our conversation on December 11, 2007, you are aware that Juda has turned in their transportation permits to the Business Integrity Commission. As such, your services as the Monitor for Juda are no longer required. I would like to thank you for your professionalism in handling this account. See Pure Earth Letter to FJLA, December 12, 2007.

As a result of this correspondence, FJLA ceased performing their monitoring services.

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[20] American Transportation's financial records confirm that this relationship continued as approximately $20,000.00 per month was paid to CJT for the first 6 months of 2007. FJLA calculated that American Transportation paid CTJ $120,562.41 over the stated time period. However, as of December 13, 2007 Pure Earth disclosed that a total of $468,615.56 had been paid since the inception of Thomas A.'s consulting agreement; this figure did not include the $60,000.00 paid for FMG's truck. See Pure Earth's Response to Information Request, December 13, 2007.

The staff has conducted an investigation of the Applicant and its principals. On May 11, 2010, the staff issued an 18-page recommendation that the Juda's application be denied. See Recommendation of the Staff that the Business Integrity Commission deny the Application of Juda for Renewal of its Registration to Operate as a Trade Waste Business ("Recommendation"). The Recommendation was served via United State Postal Service First Class Mail on the Nicholas Paniccia and Brent Kopenhaver, President of Pure Earth, at their place of business. In addition, a copy of the Recommendation was sent to the Applicant's counsel, Allan Bahn Esq. The Applicant was granted until June 10, 2010 to respond, well beyond the statutory mandated ten business days. See 17 RCNY §2-08(a). The Applicant submitted a response which contained a legal argument, which will be discussed in the foregoing. However, the response did not contest the Recommendation's factual findings.

The Commission has carefully considered both the staff's recommendation and the Applicant's response. For the reasons stated below, the Commission finds that the Applicant lacks good character, honesty, and integrity and denies its renewal application.

A. The Applicant failed to demonstrate eligibility for a trade waste registration as it violated the terms and conditions of its registration:

When evaluating a company's eligibility for a trade waste registration, the Commission may look to any ground which tends to demonstrate an applicant's good character, honesty and integrity. The Commission is not limited to the specific grounds listed in Admin. Code §16-509(a), as they are meant to be illustrative and not exhaustive. As discussed below, the Applicant has blatantly and repeatedly breached and disregarded the terms and conditions of its Registration Order demonstrating that it is ineligible and unfit for registration.

1. The Applicant knowingly associated with convicted racketeers.

Admin. Code §16-501(a) defines the "Applicant" as "the entity and each principal thereof." The Registration Order expands upon that definition and includes all "employees and corporate or other affiliates of the Applicant." See Registration Order at 3. Following the acquisition of Juda, Pure Earth and all of its principals and its affiliated companies including American Transportation and CJT became subject to terms and conditions of the Registration Order, including the prohibition against knowingly associating with racketeers. Section 2 of the Registration Order reads:

> The Applicant shall not knowingly associate with any member or associate of organized crime or any racketeer in any manner, whether the association is related to the trade waste removal industry or not related to the trade waste removal industry;

Similarly, Admin. Code §16-509(a)(v) prohibits such associations and defines the term racketeer as a "person who has been convicted of racketeering activity," including anyone convicted the offenses listed in the Racketeer Influenced and Corrupt Organizations statute, 18 U.S.C. §1961 et seq., or any offense listed in the definitions section of the New York State Enterprise Corruption Statute, Penal Law §460.10.

Joseph A., Thomas A. and Uzzi have each been convicted of racketeering activities. In 1983, Joseph A. and Uzzi were both convicted of Scheme to Defraud in the First Degree relating to a phony bond sales scheme. See Uzzi Criminal History; Joseph A. Criminal History; Whitney Denial Decision at 19. Additionally in 1983, Joseph A. and Uzzi were both convicted in Federal Court of Conspiracy to Commit Mail Fraud. See Uzzi Criminal History; Joseph A. Criminal History; Whitney Denial Decision at 19. In 2003, Thomas A. was found guilty after a jury trial of Offering a False Instrument for Filing in the First Degree and Perjury in the First Degree for lying about ties to organized crime in Whitney's application to the Commission. See Thomas A.'s Certificate of Conviction; Whitney Denial Decision at 16. As their conduct meets the statutory definition of racketeering activity, the Applicant was prohibited from knowingly associating with them.

Here, the Applicant associated with Joseph A., Thomas A. and Uzzi as the Applicant employed Thomas A. and Uzzi and had ongoing business relationships with Joseph A. as detailed below:

i. Thomas A. and Uzzi's employment at Pure Earth.

Following the acquisition of Juda and American Transportation, Paniccia, Thomas A. and Uzzi entered into employment relationships with Pure Earth. See Paniccia's Employment Agreement; Thomas A.'s Consulting Agreement; Uzzi's Employment Agreement.

According to the terms of their agreements Paniccia became the "President" of Juda or "Vice President" of Pure Earth, Uzzi became the "President" of Pure Earth, and Thomas A. was retained as a consultant. While the Applicant attempted to minimize Thomas A.'s role by maintaining that each affiliated company was separate, the evidence indicates that Pure Earth, Juda, American Transportation and CJT were essentially the same company. See supra at 9-12.

ii. A common and undivided interest in Juda, Whitney Contracting, Fullerton, Whitney and Emperor.

The Divestment Agreement, the Release and the Final Release clearly establish that Thomas A., Uzzi and Paniccia, the "Purchasers," owned a common interest in among other things Juda, Whitney Contracting, Fullerton, Whitney and Emperor. While the Applicant denied common ownership and blamed the appearance of such on ineffective drafting, these legal documents which memorialize a multimillion dollar transaction are consistent as to the identity of the Purchasers and the alleged error was not corrected in the two subsequently executed documents.

Moreover, Thomas A.'s and Uzzi's ownership interests in Juda are further established by the fact that Uzzi wrote checks in the amount of $700,000.00 and $400,000.00 and Thomas A, wrote a check in the amount of $600,000.00 to release Joseph A.'s interest in Juda and the related companies.

iii. The obligation to employ FMG's truck at the highest possible rate.

The mere existence of the FMG Condition and the payments made to Joseph A. to secure the Release and Final Release demonstrate Joseph A.'s ongoing interest in and business association with Juda. Notably, this condition was inserted at Joseph A.'s behest and it was quite valuable as it was only released upon the payment of an additional $230,000.00 to Joseph A. from Paniccia, Thomas A. and Uzzi.

All of these business associations are clear violations of the Registration Order and Admin. Code §16-509(a)(v) which prohibits associations with convicted racketeers. Each violation alleged is an independently sufficient ground for denial.

2. The Applicant maintained a prohibited business relationship with both Joseph Attonito and Thomas Attonito.

In addition to the Applicant being prohibited from associating with the Joseph A. and Thomas A. because they are convicted racketeers, the Registration Order specifically limits the extent of Juda's association with them by stating in part:

> The Applicant acknowledges that it will not employ or otherwise retain the services of, or do business with Joseph Attonito or Thomas Attonito, except as disclosed above.[21] See Registration Order at 5.

Based upon the same analysis contained in subsection A(1)(i)-(iii), prohibited business associations clearly existed with Joseph A. and Thomas A. See supra at 13-15. Therefore the Applicant has also violated the Registration Order based upon the same facts and analysis contained above.

3. The Applicant terminated the monitor without the Commission's permission and consent.

As stated above the Commission issued a Registration Order to the Applicant effective on September 1, 2005. On August 25, 2005, the Applicant signed the order thereby consenting to among other conditions, the implementation of a monitor. The Commission required this condition because of Paniccia's business and personal relationships with Joseph A., Thomas A.

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[21] Section 8 of the Registration Order in its entirety reads: "Except as noted herein, the Applicant shall not employ or otherwise retain the services of, or do business with, any person or entity at any time after the Commission has issued a finding that said person or entity lacks good character, honesty, or integrity, or that said person was a principal of an entity that lacks good character, honesty, or integrity, and has informed the Applicant of such finding. Upon receipt of notice of such a finding, the Applicant shall not dispute the finding at any time or in any proceeding. The Applicant acknowledges that on March 23, 2004, the Commission issued a finding that Joseph Attonito and Thomas Attonito were principals of Whitney Trucking, Inc. ("Whitney") and that Whitney lacked good character, honesty and integrity. The Applicant has previously represented to the Commission that the Applicant conducts business with Joseph Attonito (or a company owned or operated by Joseph Attonito) and has testified that the business dealings are limited to: (a) the rental of property at 300 Fullerton Avenue from Fullerton Land Development Corp., an Attonito company and (b) the purchase of fuel from Emperor, an Attonito company. The Applicant acknowledges that it will not employ or otherwise retain the services of, or do business with Joseph Attonito or Thomas Attonito, except as disclosed above."

and Uzzi, who were formerly principals of or closely affiliated with Whitney, a company that the Commission had previously found lacked good character honesty and integrity.

Pending the Commission's investigation of Juda's Renewal Application, on August 31, 2007, the Commission extended all terms of the Registration Order until January 31, 2008. Section 15(b) of the registration order reads in part:

> The selection, continued retention, discharge, and replacement of the monitor shall be in the sole and unreviewable discretion of the Commission, and the Applicant waives any right to seek judicial review of the Commission's exercise of that discretion.

On December 12, 2007, Pure Earth abruptly terminated FJLA's services without consent or permission from the Commission.[22] See Pure Earth Letter to FJLA, December 12, 2007. The termination of the monitor services without the consent of the Commission is a material violation of a core terms of the Registration Order and is an independently sufficient ground to deny Juda's renewal application.

4. The Applicant failed to supplement its application materials and timely notify the Commission of material changes.

Title 17 RCNY §2-05(a)(4)(b) and section 6 of the Registration Order required the Applicant to notify the Commission of any "material change in information set forth in its application or other submitted materials" including a change in principals within 10 days. The definition of principal includes, "every officer and director and every stockholder holding ten percent or more of the outstanding shares of the corporation;" and "where a partner or stockholder holding ten percent or more of the outstanding shares of a corporation is... a corporation, a "principal shall also include... the officers, directors and stockholders holding ten percent or more of the outstanding shares of such corporation." See 17 RCNY § 1-01.

Further sections 15d and 15f of the Registration Order requires that the Applicant give ten days advance notice to FJLA of any new or prospective employees, and for the Applicant's employees to give full cooperation to the FJLA. See Registration Order at 8.

On January 19, 2006, following Pure Earth's acquisition of Juda, the Applicant was obligated to notify the Commission that Pure Earth and Uzzi became principals of the company, as Pure Earth had acquired all the company's stock and Uzzi was elevated to president. Rather, the Commission and FJLA discovered acquisition in March 2006, were not provided with the Stock Purchase Agreement until April 17, 2006, and was not formally notified until August 17,

[22] The Commission may have exercised its discretion and terminated the monitorship prior to the expiration of the renewal period had FJLA concluded that the Applicant was no longer operating a trade waste business in New York City. However, the Applicant terminated FJLA before the facts and circumstances could be fully ascertained and any determination could be made. The power to discontinue the monitorship is delegated to the Commission, not the Applicant. See Registration Order at 6.

2006. Additionally, the Registration Order required advance notice should have been given to FJLA.

As the Applicant failed to timely notify and disclose to the Commission and FJLA, the Applicant violated their duties to timely disclose, and cooperate as stated and required by the Registration Order and the RCNY.

Each of these violations of the Registration Order clearly show that the Applicant has failed to show eligibility for an exemption from the licensing requirement, and each are independently sufficient grounds for denial.

B. The Applicant lacks good character, honesty and integrity as its corporate President, Christopher Uzzi, is a convicted racketeer.

The Commission is expressly authorized to deny the registration application of an Applicant for the commission of a racketeering activity. The Admin. Code §16-509(a)(v) defines racketeering activity to include anyone convicted of the offenses listed under the Racketeer Influenced and Corrupt Organizations statute 18 U.S.C. §1961 et seq., or any offense listed in the definitions section of the New York State Enterprise Corruption Statute, Penal Law §460.10. The Applicant lacks good, character, honesty and integrity as Uzzi, its former president and current principal, is a convicted racketeer.

On the same day that Juda and American Transportation were acquired by Pure Earth, both Paniccia and Uzzi executed employment agreements. Following this transaction Pure Earth became Juda's parent company and Uzzi became a principal of Pure Earth. See supra at 14. As stated above, Uzzi is a convicted racketeer and thus lacks good character honesty and integrity. See Admin. Code §16-509(v).

The fact that a principal of the Applicant is a convicted racketeer provides additional independently sufficient and clear grounds to show that the Applicant has failed to demonstrate eligibility for a trade waste registration. See id.

C. Applicant lacks good character, honesty and integrity as its Principals made false and misleading statement to the Commission.

All applicants must provide truthful and non-misleading information to the Commission. A knowing failure to do so is a ground for denial of the application. See Admin. Code §16-509(b); Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); *leave denied* 2 N.Y.3d 705 (2004); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424 (1st Dept. 2008). Over the course of the Applicant's registration period, it made repeated false and misleading statements to the Commission which shows that it has failed to demonstrate eligibility for a trade waste registration.

As stated above, Paniccia repeatedly represented that he was the sole principal of the Juda. See supra at 7-8. In his deposition, Paniccia also stated that he did not own an interest in Whitney, Whitney Contracting, or Emperor. See id. As discussed above, substantial evidence

establishes that Paniccia was not the sole owner of Juda and that Thomas A., Uzzi and Paniccia held an ownership or beneficial interest in the Juda, Whitney, Whitney Contracting, and Emperor. See id. at 9-10.

Additionally, on April 3, 2006, Pure Earth's corporate leadership, Uzzi and LeVan, represented to FJLA that Thomas A. had no involvement in Pure Earth or any of its affiliated companies. See id. at 11. Later, on August 16, 2006, Uzzi disclosed that Thomas A. was employed by American Transportation and that he had been retained as a consultant by Pure Earth following American Transportation's acquisition. See id.

These false and misleading statements are significant as they concern associations with the people that are prohibited by the Registration Order and the Admin. Code §16-509(v). Further, while the Commission is not required to prove the motive for these false and misleading statements, it is clear that the Applicant intentionally mislead the Commission and FJLA to hide the true ownership and management of the Applicant. These false and misleading statements go the crux of the Commission's initial concerns about the Applicant; that it was a reincarnation of Whitney.[23] While the true extent of the Applicant's deception is unknown, these false and misleading statements clearly demonstrate that the Applicant has failed to demonstrate eligibility for a trade waste registration.

The failure of the Applicant to provide truthful and non-misleading information to the Commission is evidence that the Applicant lacks good character, honesty and integrity. Based upon this independently sufficient ground, the Commission may deny Juda's Registration Application. See Admin. Code §§16-509(b); 16-509(a)(i).

III. THE APPLICANT'S RESPONSE TO THE COMMISSION STAFF'S DENIAL RECOMMENDATION

The Applicant's Response to the Recommendation ("Response") failed to contest and thus concedes the Recommendation's factual findings. Instead, the Applicant argued that by attempting to withdraw its Renewal Application, the Applicant deprived the Commission of its jurisdictional authority to reach a final determination about the Applicant's good character, honesty and integrity. Similarly, the Applicant argued that as of the date the Applicant attempted to withdraw its Renewal Application, the Applicant was no longer bound to comply with the terms of the Registration Order: principally the monitorship requirement. The Applicant also argued that the Commission violated the Applicant's due process rights by failing to notify the Applicant about violations of the Registration Order and the Administrative Code prior to issuing a denial recommendation. Finally, the Applicant argued that the Commission's finding is illegal as New York Law disfavors prospective debarment for purposes of punishment.

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[23] On June 20, 2007 the Trustees and Fiduciaries of the Local 282 Pension Trust Fund filed a lawsuit against Pure Earth alleging that Juda and Pure Earth were successor companies to Whitney and therefore they were responsible for pension liability for their union truckers in the amount of $709,918.45. See Local 282, International Brotherhood of Teamsters v. Juda Constr. et al., 07-CV5763 (S.D.N.Y. filed June 20, 2007). Rather than litigate these allegations, on January 10, 2008, Pure Earth settled this claim for $650,000.00. See Pure Earth, SEC Form 10/A, August 8, 2008 at 211.

In their response, the Applicant's challenges the Commission's authority and jurisdiction over their Renewal Application. In essence, they argue that the Commission did not have the authority to reach a final determination after the Applicant attempted to withdraw as the statute which enables and governs the Commission does not specifically authorize such a determination. Therefore, the Applicant's attempt to withdraw its Renewal Application, in effect, terminated the Commission's jurisdiction over the Applicant, depriving the Commission of its ability to complete its investigation and make a final determination. Additionally, as they had removed themselves from the Commission's jurisdictional purview, the requirement to abide by the Registration Order's terms and conditions was eviscerated.[24]

This argument is flawed as it misstates the well settled law that a statutory grant of power to an administrative agency may include necessarily implied discretionary powers that are not specifically articulated. The Court of Appeals states the law as follows:

> Indeed, in many cases, the Legislature has no alternative but to enact statutes in broad outline, leaving administrative officials enforcing them the duty of arranging the details. More to the point, it is not always necessary that license legislation prescribe a specific rule of action and, where it is difficult or impractical for the Legislature to lay down a definite and comprehensive rule, a reasonable amount of discretion may be delegated to the administrative official.

Levine v. Whalen, 39 N.Y.2d 510, 515-516 (1976) (citations omitted); see also Dorst v. Pataki, 90 N.Y.2d 696 (1997); Big Apple Food v. Street Vendor Review Panel, 90 N.Y.2d 402 (1997); Rainbow Beach Ass'n v. New York State Dep't of Health, 187 A.D.2d 891 (3d Dep't 1992).

Here, the City Council has given the Commission broad discretion to "establish standards for the issuance, suspension and revocation of licenses and registrations." Admin. Code §16-504(a). Therefore, the power to reach a final determination on the registration application that an applicant has attempted to withdraw is a reasonable and necessary exercise of the Commission's discretion.

Sound public policy also firmly supports the power to reach a final determination on the registration application that an applicant has attempted to withdraw, as it is essential to effectuate the Commission's mandated purpose. Without it, the Commission's very purpose would be frustrated and serious inefficiencies would abound. Unsuitable companies would simply withdraw their application upon detection of a lack of good character, thus escaping the Commission's scrutiny and derogatory finding. These companies would then reapply under a different name and corporate structure, hoping to evade detection, knowing that there would be no complete record of previous investigations, or their qualifications and history. As a result, most previous investigative efforts would require duplication, further taxing the Commission's limited resources and increasing the likelihood of an unsuitable company evading detection. In addition, the Commission's regulatory processes and investigative functions, including: 1) documenting unsuitable companies; 2) gathering and recording intelligence; 3) exchanging of information with other jurisdictions; 4) warning other jurisdictions of unsuitable companies; and

[24] Specifically, the Registration Order's monitorship condition and associational restrictions.

5) safeguarding the public against unscrupulous business activities would also be thwarted if a company had the power to end the Commission's jurisdiction by attempting to withdraw.

Significantly, other jurisdictions that have considered this very issue in analogous circumstances have universally reached the same conclusion. See Simms v. Napolitano, 205 Ariz. 500 (Ariz. Ct. App. 2003) (held gaming Commission had inherent right to deny applicant's request to withdraw application); Perry v. Medical Practice Board, 169 Vt. 399 (Vt. 1999) (held Medical Board's discretion to deny a request for withdrawal was within the necessary and implied powers); Davidson v. Board of Medicine, 562 A.2d 109 (D.C. 1989) (upheld Medical Board's power to reach final determination on an expired application, as holding otherwise would undermine the purpose of the Board); eVineyard Retail Sales-Mass., Inc. v. Alcoholic Bevs. Control Comm'n, 450 Mass. 825 (Mass. 2008) (upheld Alcoholic Beverage Control Commission's power to reach final determination on an expired application, as holding otherwise would frustrate the legislature's intent in forming the Commission).

The Applicant also argues that the Commission violated its due process rights by failing to notify the Applicant of possible violations of the Registration Order and allowing an opportunity for corrective action and response. However, the Applicant clearly misunderstands the standards of due process. As articulated in A.C. §16-509, the Applicant must be given "notice and an opportunity to be heard." Here, the Commission has scrupulously followed the due process procedure as the Applicant was given notice in the form of a written denial recommendation and the opportunity to be heard in the form of a written response. No further process was due. Instead, the Applicant cites to language in the Registration Order which states that the monitor shall give the Applicant written notice of any non-criminal deficiencies it finds. FJLA did not issue this written report, because the Applicant terminated FJLA while the investigative process was ongoing and prior FJLA reaching its conclusions. Therefore issuing any written report to the Applicant would have been premature. Moreover, the issuance of the written report was not a due process right.

Further, this argument is clearly disingenuous as the restriction on conducting business with Joseph A., Thomas A. or associating with any convicted racketeer (Joseph A. and Uzzi) was a meticulously negotiated term that was contained in the Registration Order when it was executed.[25] Further notice that such associations and business dealings were prohibited was not required as the Applicant had actual knowledge of the prohibition. Proof of this fact can be found in the Applicant's attempt to secret their relationships and associations with Joseph A. and Thomas A. from the Commission and FJLA. See supra at 11. Additionally, the Applicant's counsel was clearly on notice through the numerous correspondences and telephone conversations with the Commission. It is noteworthy that the Applicant's curative actions did not include separating the Applicant from these individuals; rather the Applicant chose to attempt to withdraw from the Commission's jurisdictional purview. Even after their attempt to withdraw was denied, the Applicant took no further steps to divest these prohibited individuals.[26] The Applicant is clearly attempting to conceal the plain and simple fact that they blatantly

[25] Additionally, Paniccia who negotiated and executed the Registration Order was employed by the Applicant when it was discovered that Thomas A. and Uzzi were employed with the Applicant.

[26] Based upon information and belief, Uzzi and Thomas A. are still employed by the Applicant.

violated a fundamental term of the Registration Order by conducting business with Joseph A. and Thomas A. and associating with convicted racketeers Joseph A. and Uzzi.

The Applicant's final argument claims that the Commission's actions are illegal because they are punitive in nature as the Commission's finding will result in the Applicant's prospective debarment from obtaining public contracts. Plainly, this argument is without merit as the Applicant cites case law which is not analogous or applicable to the Commission or its mission and regulatory function. Local Law 42 empowers the Commission to make a finding to exclude those business which lack good character honesty and integrity from participating in the trade waste industry. While the results of such a finding may be undesirable and detrimental to the Applicant's business, the Commission's function and mission does not contemplate or include the debarment of companies from bidding on or obtaining public contracts. Further, the Commission's findings are not punitive as they are based upon the undisputed facts obtained through the Commission's investigation which was conducted pursuant to its vested authority. See supra at 4.

IV. PURE EARTH LACKS GOOD CHARACTERER, HONESTY AND INTEGRITY

As stated above on or about September 1, 2005, Juda was issued a Registration Order containing certain terms and conditions. Through the acquisition, on or about January 19, 2006, Pure Earth became Juda's parent company, and thereby the Applicant before the Commission.

As the Pure Earth has violated the clear terms of the Registration Order by terminating the Monitor, hiring Thomas A. and Uzzi, and associating with convicted racketeers Joseph A., Thomas A. and Uzzi, it has demonstrated that it lacks good character honesty and integrity. Therefore, the Commission makes such a finding against both Juda and its parent company Pure Earth.

V. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license to any applicant that it determines lacks good character, honesty, and integrity. "The commission may refuse to issue a license or registration to an applicant ... who has otherwise failed to demonstrate eligibility for such license under this chapter". See Admin. Code §16-509(b). The evidence recounted above demonstrates convincingly that Juda and Pure Earth fall far short of that standard.

Based upon the above independently sufficient reasons, the Commission denies Juda's renewal application. This denial is effective immediately. Juda and Pure Earth may not operate as a trade waste business in the City of New York.

Dated: 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

Jayme Naberezny, Inspector General (designee)
Department of Investigation

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

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