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 APPLICATION OF SDC ASSETS INC. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS.

SDC Assets, Inc. ("SDC" or the "Applicant") submitted an application to the New York City Business Integrity Commission ("Commission"), formerly known as the New York City Trade Waste Commission, for an exemption from licensing requirements and a registration to operate a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), § 16-505(a). Local Law 42, which created the Commission to regulate the trade waste removal industry in New York City, 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.

SDC has applied to the Commission for an exemption from licensing requirements and for a registration enabling it to operate a trade waste business "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation" – a type of waste commonly known as construction and demolition debris, or "c & d." Admin. Code § 16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for exemptions. See id. If, upon review and investigation of the exemption application, the Commission grants the applicant an exemption from licensing requirements applicable to businesses that remove other types of waste, the applicant will be issued a registration. See id.

In determining whether to grant an exemption from licensing requirements and 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). Central to the Commission's investigation and determination of an exemption 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 denies its registration application on the ground that this Applicant lacks good character, honesty, and integrity for the following independent reasons:

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

1. The Applicant's sole disclosed principal, Mark Capichana, was convicted of a felony that was related to organized crime;

2. Scott DeVivo, who was disclosed to the Commission as an employee of the Applicant, was convicted of a felony that was related to organized crime;

3. The Applicant has failed to pay government obligations for which judgments have been entered;

B. The Applicant knowingly failed to provide information and provided false and misleading information to the Commission:

1. The Applicant provided false and misleading information on the Registration Application;

2. Mark Capichana refused to provide sworn testimony 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 guilty 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 constitutional challenges (both facial and as applied) 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. City. 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. THE APPLICANT

SDC was incorporated in 2001.[1] On October 27, 2006, SDC filed an application for an exemption from licensing and a trade waste registration for removal of construction and demolition debris (the "Registration Application"). The sole principal disclosed on the application is Mark Capichana ("Capichana"). See Registration Application at 9. The staff has conducted an investigation of the Applicant and its principal.

On September 15, 2008, the staff issued an 11-page recommendation that the application be denied. The Applicant was served with the recommendation on or about September 16, 2008 and was granted ten business days to respond (September 29, 2008). See 17 RCNY §2-08(a). The Applicant failed to submit a response (or a request for additional time) by that deadline.[2]

Nevertheless, on or about October 10, 2008, the Commission received the Applicant's response to the staff's recommendation, which consisted of a 2-page unsworn

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[1] Although the Applicant has never been legally authorized to operate in the City of New York, on October 4, 2006, a Commission investigator observed one of the Applicant's trucks while it collected and transported waste from an excavation site in Brooklyn. Consequently, on October 11, 2006, the Applicant was charged with operating an unlicensed or unregistered waste removal business, in violation of Admin. Code §16-505(a). See Department of Consumer Affairs ("DCA") Notice of Hearing, #TW-1575. On November 16, 2006, a hearing was scheduled at the DCA before Administrative Law Judge ("ALJ") Lee Fawkes. Although duly notified of the time and place of the hearing, the Applicant failed to appear. Accordingly, no testimony or other evidence was taken. Subsequently, by Decision and Order dated December 15, 2006, ALJ Fawkes found SDC guilty of violating Admin. Code §16-505(a) and ordered SDC to pay a fine of $5,000 to the Business Integrity Commission. See Decision and Order. After the Applicant's motion to vacate the default decision was granted and the case was placed back on the DCA calendar, the Applicant and the Commission settled the violation by entering into a Stipulation of Settlement.

[2] The Applicant claims that it received the recommendation during "the week of September 29, 2008."

letter from the Applicant's attorney. The Applicant submitted a response that admittedly did "not address any of the substantive issues" in the recommendation. See Response at 1.

The Commission has carefully considered both the staff's recommendation and the Applicant's untimely response. The Applicant's untimely response need not be considered by the Commission, thereby leaving the evidence against the Applicant uncontested. Regardless, despite the tardiness of the response, the Commission has considered the Applicant's response, which failed to dispute any of the grounds for denial. For the reasons stated below, the Commission finds that the Applicant lacks good character, honesty, and integrity and denies its application.

III. GROUNDS FOR DENIAL

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

1. The Applicant's sole disclosed principal, Mark Capichana, was convicted of a felony that was related to organized crime.

In 1999, a federal grand jury in the Southern District of New York indicted Mark Capichana. See United States of America v. Cerchio, et. al., No. 99 Cr. 1196 (SDNY) ("Capichana Indictment"). The Capichana Indictment charged that Capichana and others conspired to "transport, transmit, and transfer in interstate commerce goods, wares, and merchandise having a value in excess of $5,000, knowing the same to have been stolen, converted, and taken by fraud," in violation of Title 18, United States Code, Section 2314. See id. at 1-2. The Capichana Indictment also charged that Capichana and others "unlawfully, willfully and knowingly would and did receive, possess, conceal, store, barter, sell and dispose of goods, wares, and merchandise having a value in excess of $5,000, knowing the same to have been stolen, unlawfully converted and taken," in violation of Title 18, United States Code, Section 2315. See id. Specifically, Capichana was accused of delivering a stolen truck trailer loaded with pallets of lumber that had been transported from Virginia. See id. at 3.

Capichana was also named as an unindicted coconspirator in an accompanying indictment, United States of America v. Palermo, et. al., No. 99 Cr. 1199 (SDNY) ("Palermo Indictment"). Twenty-one defendants, many of whom were identified as members or associates of organized crime were named in this multi-count racketeering indictment, which arose out of the activities of the Decavalcante organized crime family of New Jersey. See id. Charges in the Palermo Indictment included murder, murder conspiracy, extortion, robbery, mail fraud, loansharking, illegal gambling, and trafficking in stolen property, goods and United States savings bonds. See Palermo Indictment.

In connection with the Capichana Indictment, on March 6, 2000, Capichana pled guilty to conspiracy to transport stolen property. See Capichana Docket Report. On June 6, 2000, Capichana was sentenced to three years probation. See Capichana Docket

Report. In its response, the Applicant does not dispute this point, leaving this ground uncontested. Mark Capichana's recent conviction of a crime that was related to organized crime compels the conclusion that both Capichana and the Applicant lack good character, honesty, and integrity and have failed to demonstrate eligibility for a registration. Based on this independent ground, this application is denied.

2. Scott DeVivo, who was disclosed to the Commission as an employee of the Applicant, was convicted of a felony that was related to organized crime.

On its application, the Applicant disclosed to the Commission that Scott DeVivo is a vehicle operator for the Applicant. See Registration Application at 14. In 1993, a federal grand jury in the Eastern District of New York indicted Scott DeVivo. See United States of America v. Amato, et. al., No. 93 Cr. 1364 (EDNY) ("DeVivo Indictment"). In the DeVivo Indictment, DeVivo's co-defendant, Joseph Amato, was identified as an "acting captain in the Colombo" organized crime family and DeVivo as an associate in Joseph Amato's crew. See id. at 3. Specifically, the indictment alleges that DeVivo was a participant in the "Colombo wars." As such, DeVivo, and others, "for the purpose of gaining entrance to and maintaining and increasing their positions in the Colombo Family of La Cosa Nostra, ... conspired to murder members of the Persico faction of the Colombo Family, in violation of New York Penal Law Sections 125.25 and 105.15." See id. at 5-6. In addition, the government alleged that DeVivo and others conspired to make extortionate extensions of credit and conspired to use extortionate means to collect and attempt to collect extensions of credit. See id. at 6-7. On September 6, 1996, DeVivo pled guilty to making extortionate extensions of credit, and was sentenced to twenty-seven months in prison and three years of supervised release. See DeVivo Docket Report. Thus, employee Scott DeVivo has been publicly identified as an associate of organized crime and is a convicted felon. His employment by this Applicant is inimical to the purposes of Local Law 42. In its response, the Applicant does not dispute this point, leaving this ground uncontested. Based on this independently sufficient ground, the Commission denies SDC's application.

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

"[T]he failure to pay any tax, fine, penalty or fee related to the applicant's business for which ... judgment has been entered by a court or administrative tribunal of competent jurisdiction" reflects adversely on an applicant's integrity. See NYC Admin. Code §16-509(a)(x). According to a judgment and lien search conducted by the Commission on June 20, 2008, New York State has docketed the following nine (9) judgments against this Applicant:

• Criminal Court of New York	Filed 5/11/05	$250.00
• Criminal Court of New York	Filed 5/11/05	$250.00
• Criminal Court of New York	Filed 5/11/05	$100.00
• Criminal Court of New York	Filed 5/11/05	$100.00
• Criminal Court of New York	Filed 11/30/05	$500.00
• Criminal Court of New York	Filed 11/30/05	$500.00
• NYS Department of Labor	Filed 1/29/04	$3,079.41
• NYS Department of Tax. and Finance	Filed 7/2/04	$19,669.97
• Workers Compensation Bd. of NYS	Filed 11/27/06	$2,250.00

These judgments filed against SDC total $26,699.38. See Lexis/Nexis printouts, SDC Assets, Inc.

Again, the Applicant's failure to satisfy numerous debts that have been reduced to judgment demonstrates that the Applicant lacks good character, honesty and integrity. The Response submitted by the Applicant does not address this point, leaving this ground uncontested. Based on this sufficient independent ground, the Commission denies this application.

B. The Applicant knowingly failed to provide information and provided false and misleading information to the Commission.

1. The Applicant provided false and misleading information on the Registration Application.

The Commission may refuse to issue a registration to an applicant who has failed "to provide truthful information in connection with the application." See Admin. Code §16-509(b); Attonito, 3 A.D.3d 415. See also Breeze Carting Corp. v. The City of New York, No. 107859/07 (Sup. Ct. N.Y. Cty. Apr. 1, 2008). Capichana submitted false information in SDC's Registration Application filed with the Commission on October 27, 2006.

Capichana certified that the information contained in the Registration Application was complete and truthful. See Registration Application at 16. Question 26 of the application asks, "Has the applicant business, or any current principal, or any past principal who was a principal in the last three (3) years of the applicant business, ever

been convicted of any misdemeanor or felony in any jurisdiction?" Capichana responded to the question by answering "no." As discussed above, in 2000, Capichana was convicted of conspiracy to transport stolen property.

This failure to provide truthful information demonstrates that Capichana lacks the requisite good character, honesty and integrity to operate a trade waste business in New York City. The Applicant's response does not dispute this point, leaving this ground uncontested. For this independently sufficient reason, SDC's application is denied.

2. Mark Capichana refused to provide sworn testimony to the Commission.

The Commission has the power "[t]o investigate any matter within the jurisdiction conferred by [Local Law 42] and [has] full power to compel the attendance, examine and take testimony under oath of such persons as it may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other evidence relevant to such investigation." Admin. Code §16-504(c). On numerous occasions, the Applicant has delayed the Commission's requests for its principal to appear for a deposition, culminating in the Applicant's willful failure to provide requested information.

On April 12, 2007, the Commission directed the Applicant to make Mark Capichana available on May 2, 2007 to testify. See letter from the Commission to the Applicant dated April 12, 2007. The April 12, 2007 letter advised Capichana that his "failure to appear... is an adequate ground upon which to deny [SDC's] registration application." See id. On April 27, 2007, Capichana contacted the Commission, and requested that his deposition be adjourned. In response, the Commission's staff and Capichana rescheduled the deposition for May 22, 2007. See letter from the Commission to the Applicant dated April 27, 2007. The April 27, 2007 letter reminded Capichana that his "failure to appear... is an adequate ground upon which to deny [SDC's] registration application." See id.

The Commission rescheduled Capichana's deposition to take place on June 20, 2007. See letter from the Commission to the Applicant dated June 8, 2007. Again, the June 8, 2007 letter reminded Capichana that his "failure to appear... is an adequate ground upon which to deny [SDC's] registration application." See id. On June 19, 2007, Capichana contacted the Commission, and stated that he wished to cancel his deposition and to withdraw SDC's application. Then, on September 18, 2007, Capichana contacted the Commission and stated that he was interested in pursuing SDC's application. Accordingly, the Commission scheduled Capichana's deposition to take place on October 17, 2007. See letter from the Commission to the Applicant dated September 18, 2007. The Commission advised Capichana that "this will be your final opportunity to appear for your deposition," and reminded him that his "failure to appear at this deposition is an adequate ground upon which to deny your registration application." See id.

Finally, by letter dated October 16, 2007, Capichana informed the Commission that he wished to withdraw the application and that he would like to "apply [to the Commission] at a later date."[3] See letter from Capichana to the Commission dated October 16, 2007.

The Applicant was advised throughout that the failure to appear for a deposition is an adequate ground upon which to deny the registration application. The Commission may refuse to grant a registration if an applicant "has knowingly failed to provide the information and/or documentation required by the commission . . . ." Admin. Code. § 16-509(b).

In its response, the Applicant asserts that the Applicant withdrew its application, and therefore, there is no application for the Commission to consider. The Commission rejects the Applicant's assertion. The Applicant sought to withdraw its application far too late in the process for the Commission to grant such a request. As such, the Commission denied the Applicant's request to withdraw its application. The Commission expended resources to investigate this Applicant and its principal before the Applicant requested that its application be withdrawn. Furthermore, the Applicant's delay tactics before requesting that its application be withdrawn caused the Commission to expend additional resources in order to complete its investigation. Finally, the Applicant demonstrated that it has engaged in unlicensed and unregistered trade waste removal activity in New York City and admitted that it would like to "apply [to the Commission] at a later date." See Footnote 1; see also letter from Capichana to the Commission dated October 16, 2007. Thus, the Applicant has operated as a trade waste removal business in New York City and intends to do so in the future. Therefore, the instant application is not withdrawn and must be considered. The refusal of Mark Capichana to provide sworn testimony in connection with the registration application of SDC constitutes another independent basis on which the Commission denies this application.

[3] Capichana acknowledged that he had requested that his deposition be adjourned on several occasions when he stated that he would like to "extend [his] appreciation for all the rescheduling [the Commission has] done previously." See letter from the Applicant to the Commission dated October 16, 2007.

IV. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license or registration to any applicant that it determines lacks good character, honesty, and integrity. The evidence recounted above demonstrates convincingly that SDC falls far short of that standard. Based upon the above independently sufficient reasons, the Commission denies SDC's exemption application and registration.

This exemption/registration denial is effective immediately. SDC Assets, Inc. may not operate as a trade waste business in the City of New York.

Dated: November 7, 2008

THE BUSINESS INTEGRITY COMMISSION

Michael J. Mansfield
Commissioner/Chair

John Doherty, Commissioner
Department of Sanitation

Jonathan Mintz, Commissioner
Department of Consumer Affairs

Deputy Commissioner
Rose Gill Hearn, Commissioner
Department of Investigation

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

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