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 VAL P INC. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

Val P Inc. (the "Applicant" or "Val P") 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 an 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.

Val P applied to the Commission 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 registration. See id. If, upon review and investigation of the application, the Commission grants the Applicant a registration, the Applicant becomes "exempt" from the licensing requirement applicable to businesses that remove other types of waste. See id.

In determining whether to grant a registration to operate a construction and demolition debris removal business, the Commission considers the same types of factors that are pertinent to the Commission's determination whether to issue a license to a business seeking to remove other types of waste. See, e.g., Admin. Code §16-504(a) (empowering Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); compare Title 17, Rules of the City of New York ("RCNY") §§1-06 & 2-02 (specifying information required to be submitted by license applicant) with id. §§1-06 & 2-03(b) (specifying information required to be submitted by registration applicant); see also Admin. Code §16-513(a)(i) (authorizing suspension or revocation of license or registration for violation of Local Law 42 or any rule promulgated pursuant thereto); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008). Central to the Commission's

investigation and determination of a registration application is whether the applicant has business integrity. See 17 RCNY §1-09 (prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, deceptive trade practices, and failing to timely pay taxes); Admin. Code §16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity"). Local Law 42 makes it clear that the Commission is not limited to consideration of the enumerated factors; the list is meant to be illustrative and not exhaustive.

Based upon the record as to the Applicant, the Commission denies its exemption/registration application on the ground that this Applicant lacks good character, honesty and integrity for the following independent reasons:

A. The Applicant knowingly provided false and misleading information to the Commission in its Registration Application.

   1. The Applicant failed to disclose Louis Petrosino and Louis Petrosino Sr. as principals.

   2. The Applicant failed to disclose that it shares resources with other businesses.

   3. The Applicant failed to disclose a principal's interest in other trade waste businesses.

B. The Applicant has failed to demonstrate eligibility for a registration because it repeatedly engaged in unregistered trade waste removal activity.

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, No. 107859/07 (Sup. Ct. N.Y. Cty. April 1, 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 November 2, 2006, Val P Inc. applied to the Commission for an exemption from licensing requirements for the removal of construction and demolition debris. See Val P

Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris ("Val P Registration Application"). Val P is a trucking company that transports debris from construction sites. See Val P Registration Application at 4. Valerie Petrosino was disclosed as the Applicant's sole principal. See Val P Registration Application. The Applicant's mailing and garage address is 397 Tompkins Avenue Staten Island, New York. Its business telephone number is (718) 816-6505, and the facsimile number is (718) 448-8640.[1] The initial corporate filing for Val P was on October 17, 2006, by Louis Petrosino, 105 "Po[u]ch Terrace," Staten Island, New York. See New York State Department of State Division of Corporations receipt, filed 10/17/2006 ("10/17/06 corporate filing").[2] Louis Petrosino is Valerie Petrosino's husband, who was disclosed as a driver for Val P. See Valerie Petrosino Questionnaire at 3; Val P Registration Application at 14.

On February 27, 2008, Valerie Petrosino appeared for a deposition before the Commission. She was accompanied by her father-in-law, Louis Petrosino Sr. ("Petrosino Sr."). Her testimony revealed that she knew very little about the Applicant business and was unable to answer basic questions about the company. See Valerie Petrosino deposition testimony ("Valerie Petrosino Tr.").

As discussed below, Louis Petrosino and his father, Petrosino Sr., have owned and/or operated various trade waste businesses, some of which have been registered with the Commission. There is substantial evidence that those companies are essentially the same company as Val P, the only difference among them being the name. First, Louis Petrosino owned and/or operated each company. Each company is or was a trucking company formed to provide dump truck service for the removal of construction and demolition debris. Further, all such companies have had the same business location, garage location, telephone number, and facsimile number. The evidence further establishes that Louis Petrosino and his father, not Valerie Petrosino, in fact operate Val P and were responsible for the submission of the Val P Registration Application to the Commission. Moreover, as discussed throughout this recommendation, Val P was formed and submitted the instant application shortly after Louis Petrosino surrendered a Commission-issued registration for one of his companies and withdrew a registration application for another one of his companies that was pending with the Commission, likely in an attempt to circumvent the Commission's rules and regulations as well as its direct instructions.

Louis Petrosino

On September 12, 1996, Louis A. Petrosino, Inc. applied to the Commission for an exemption from licensing requirements for the removal of construction and demolition debris. See Louis A. Petrosino, Inc. Application for Exemption from Licensing Requirement for Removal of Demolition Debris ("Louis A. Petrosino, Inc. Registration Application"). Louis Petrosino was the sole principal and owner of Louis A. Petrosino, Inc., a company that performed dump truck services from excavation sites. See Louis A. Petrosino, Inc. Registration

[1] As discussed below, this is the same address, telephone number, and facsimile number as other companies owned and operated by Louis Petrosino, Valerie Petrosino's husband.

[2] As discussed *infra* at 14, subsequent to this filing, Valerie Petrosino filed for Val P to obtain authority to do business in New York.

Application at 20, 25. The company's main office and mailing address was at 105 Pouch Terrace, Staten Island, New York, and its garage was located at 397 Tompkins Avenue, Staten Island, New York. See Louis A. Petrosino, Inc. Registration Application; Louis A. Petrosino Registration Order, dated December 20, 2004. The home address of Valerie and Louis Petrosino is 105 Pouch Terrace, Staten Island, New York. See Val P Registration Application at 9; Petrosino Hauling Registration Application at 9. The business telephone number was (718) 816-6505, and the facsimile number was (718) 448-8640. See letter dated March 30, 2000 from Louis Petrosino ("3/30/00 Louis Petrosino letter").

On March 30, 2000, Louis Petrosino submitted documentation to the Commission authorizing his father, Louis A. Petrosino, Sr., to handle any and all matters for the company before the Commission. See 3/30/00 Louis Petrosino letter.

On August 27, 2002, the Commission granted Louis A. Petrosino, Inc.'s Registration Application. On August 27, 2004, Louis A. Petrosino, Inc. applied to renew its registration, and on or about December 24, 2004, that application was granted. On September 27, 2005, the company name was amended from Louis A. Petrosino, Inc. to Poco Loco Trucking Inc. On July 5, 2006, the company again applied to renew its registration. See Licenseview printout for Poco Loco; Poco Loco Renewal Application dated 7/5/06.

On September 26, 2005, Petrosino Hauling Inc. ("Petrosino Hauling") applied to the Commission for an exemption from licensing requirements for the removal of construction and demolition debris. See Petrosino Hauling Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris ("Petrosino Hauling Registration Application"). Louis Petrosino was the sole principal and owner of Petrosino Hauling, a company that performed construction debris removal services. See Petrosino Hauling Registration Application at 4. Its garage was at 397 Tompkins Avenue, Staten Island, New York, and its mailing address was 105 Pouch Terrace, Staten Island, New York. The business telephone number was (718) 816-6505, and the facsimile number was (718) 448-8640. See Petrosino Hauling Registration Application.

The investigation of Petrosino Hauling's Registration Application revealed that although the application disclosed six employees, the company did not possess the legally required workers' compensation insurance coverage.[3] When confronted with this issue, Louis Petrosino stated that the listed employees were not employed by Petrosino Hauling, but were in fact employed and paid by another company owned and operated by him, Louis Alexander Petrosino, Inc. He further asserted that Petrosino Hauling, contrary to what was stated in the application, did not have any employees and solely owned commercial vehicles. See Louis Petrosino affidavit dated February 2, 2006.

In light of these representations, on February 3, 2006, a Commission staff member notified Louis Petrosino that because Louis Alexander Petrosino, Inc. employed the individuals who intended to haul trade waste, it was required to obtain a trade waste registration. Alternatively, if the employees were to be hired by Petrosino Hauling, Petrosino Hauling must

[3] Prior to a registration or license being issued, an applicant is required to submit proof of workers compensation coverage or that the applicant is exempt form the Worker's Compensation Law. See RCNY §2-02.

obtain workers' compensation insurance. Louis Petrosino was informed of the steps he must take to comply with the Commission's rules and regulations, and was provided with the appropriate registration application for Louis Alexander Petrosino, Inc. to complete. See Memo dated March 14, 2006; letter dated February 3, 2006.

On March 14, 2006, Louis Petrosino provided the Commission with a notarized statement asserting that he would dissolve Petrosino Hauling, hire the employees under Poco Loco Trucking, which at that time had a Commission-issued registration, and obtain the requisite workers' compensation insurance under that company. He also requested that the Commission withdraw Petrosino Hauling's Registration Application. See letter dated March 14, 2006 from Louis Petrosino. Therefore, on March 16, 2006, the Commission withdrew Petrosino Hauling's Registration Application.

On October 5, 2006, Poco Loco surrendered its Commission-issued registration. See Licenseview printout for Poco Loco.

To date, Louis Alexander Petrosino, Inc. has not submitted an application for a trade waste registration.

On March 28, 2008, the Applicant amended its Registration Application to include Louis Petrosino and Petrosino Sr. as principals.

The Commission's staff has conducted a background investigation of the Applicant and its principals. On December 29, 2009, the staff issued a fourteen-page recommendation that the Val P Registration Application be denied (the "Recommendation"). On December 29, 2009, the Commission sent the Recommendation to the Applicant's mailing address by regular mail. See Val P Registration Application at 1. Pursuant to the Commission's rules, the Applicant had ten business days to submit a response to the Recommendation. See 17 RCNY §2-08(a); see also Recommendation at 14. On January 6, 2010, a Commission staff member spoke with Petrosino Sr., who requested a copy of the record relied on by the Commission staff in the Recommendation and additional time to respond to the Recommendation. On January 6, 2010, the Commission mailed a copy of the record to the Applicant and extended its deadline to respond to the Recommendation for two weeks, until the close of business on February 2, 2010. As of the date of this decision, the Applicant did not submit any response to the staff's Recommendation.

The Commission has carefully considered the staff's Recommendation. For the reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity, and has failed to demonstrate eligibility for a registration. Therefore, the Commission denies Val P's Registration Application.

III. GROUNDS FOR DENIAL

A. The Applicant knowingly provided false and misleading information to the Commission in 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(a), (b); Attonito, 3 A.D.3d 415. See also Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008). Valerie Petrosino certified that the information contained in the Val P Registration Application was true and accurate. See Valerie Petrosino Tr. at 10-11. In fact, the application contained numerous false, inaccurate, and/or misleading statements.

1. The Applicant failed to disclose Louis Petrosino and Louis Petrosino Sr. as principals.

The Val P Registration Application was false in that Valerie Petrosino was disclosed as the sole principal of the company, when, in fact, Louis Petrosino and Louis Petrosino Sr. were also principals of the Applicant.

Under Local Law 42, the definition of "principal" (which is included in the instructions section for the Application) includes corporate officers and directors, all stockholders holding ten percent or more of the outstanding shares of the corporation and "*all other persons participating directly or indirectly in the control of such business entity*" (emphasis added). See Admin. Code §16-501(d).[4]

Question 12 of the Application asks, "On Schedule A, identify all individuals who are principals of [the] applicant business...." See Val P Registration Application at 2. The application disclosed that Valerie Petrosino was the sole principal of the company. Id. at 9. Yet, at her deposition before the Commission on February 27, 2008, she knew virtually nothing about the company. For instance, Valerie Petrosino did not know the type of work done by the company or the names of its customers. Valerie Petrosino Tr. at 27-28.[5]

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[4] In addition, an individual is considered to hold stock in a corporation where such stock is owned directly or indirectly by or for the spouse of such individual. See Admin. Code §16-501(d). This broad definition of "principal" was adopted by the City Council to be read in conjunction with the legislation's §16-507 (requiring Applicants for registration to provide the Commission with information sufficient to enable the Commission to identify a business) and §16-508 (setting forth a detailed list of information Applicants for license would have to provide to the Commission). See Report of the Legal and Governmental Affairs Division of the City Council; Hearing on Int. No. 676-A Before the Committee on Consumer Affairs, May 10, 1996 at 11-12.

[5] Additionally, prior to the deposition, on March 1, 2007, a Commission staff member spoke with Valerie Petrosino. The Commission staff member asked Valerie Petrosino about her relationship with Louis Petrosino, when Val P Inc. was created, and what role Louis Petrosino had with the company. Valerie Petrosino repeated each of the Commission's questions and only responded after a male voice in the background provided the answer. Valerie Petrosino stated that Louis Petrosino, who she stated was with her at the time, is her husband and he "helps [her] out" with the business. See Memo dated March 1, 2007.

In addition, Valerie Petrosino did not know how much money she initially invested to start up the business, from where the Val P trucks came, how Val P found its garage and business location, the identities of those who solicit and accept jobs for the company, the identity of company bank accounts, to where the debris is transported, or if she was paid a salary from the business. Valerie Petrosino Tr. at 21-22, 28-29, 31-32, 35, 42-44, 48-54, 63-64. Further, she did not know basic information about the industry such as the definition of a transfer station. Id. at 63-64. Thus, it became evident that she was not the only principal of the company.

In fact, during the course of Valerie Petrosino's testimony it became clear that Louis Petrosino and Petrosino Sr. are in fact running the company and making all the decisions related thereto. Although Valerie Petrosino repeatedly testified that her father-in-law "helps [her] out" with the company, and could not say with specificity everything that he did for the company, she also testified that he "does everything [for the company] and he determines what jobs to take." Valerie Petrosino Tr. at 50-51. Further, she "guess[ed]" that he came up with the idea to start the business. Valerie Petrsoino Tr. at 29. She also stated that he "probably" helped her out with the registration application and assisted with the paperwork to start the company. See Valerie Petrosino Tr. at 9, 29-31, 62-63.

Valerie Petrosino also conceded that Petrosino Sr. knows the source of the money used to purchase the trucks, handles the billing, accepts jobs for the company, answers the telephone, and may know if Val P pays rent for the garage/office space. See Valerie Petrosino Tr. at 30-32, 35-36. 38, 48-50.

Valerie Petrosino also admitted that her husband may have done various tasks for the company, such as purchasing trucks, accepting jobs on behalf of the company, and driving Val P vehilcles. See Valerie Petrosino Tr. at 32, 52. She testified that she does not know if her husband takes a salary from the business. Id. at 53.

Notably, as discussed above, on October 17, 2006, Louis Petrosino filed with the New York State Department of State Division of Corporations for authority to do business in New York on behalf of Val P. See 10/17/06 corporate filing. Additionally, the cellular telephone number listed on the Val P Registration Application belongs to Louis Petrosino. Valerie Petrosino could not explain why her husband's cellular telephone number was on the application instead of hers. Valerie Petrosino Tr. at 39-41. She was also "not sure" why she was listed as a principal in the application instead of her husband or father-in-law. Id. at 75-76.

Thus, the evidence clearly demonstrates that in addition to being principals statutorily based on their familial relationship, Louis Petrosino and Petrosino Sr. are also principals because they exert direct control over the company.[6] Therefore, the statement on the Applicant's registration application that Valerie Petrosino was the sole principal was false and misleading.

[6] In fact, the Applicant acknowledged such after Valerie Petrosino's deposition when it submitted documentation to the Commission stating same. See March 28, 2008, amendment to Val P Registration Application.

2. The Applicant failed to disclose that it shares resources with other businesses.

The Applicant also falsely stated in its application that it does not share any resources with any other business. In fact, it shares a telephone line with Louis Alexander Petrosino Trucking and Louis Petrosino Trucking.

Question 16 of the Registration Application asks, "Does the applicant business share any office space, staff or equipment, including but not limited to telephone lines, with any other business or organization." The Applicant responded, "No." See Registration Application at 3.

In furtherance of the Commission's investigation of Val P, on February 28, 2007, a Commission staff member called the Applicant's business telephone number. The voice recording stated that the number reached was for "Louis Alexander Petrosino Trucking." See Memo dated February 28, 2007.

On March 18, 2008, a Commission staff member called the Applicant business telephone number. The recording stated that the staff member reached "Louis Petrosino Trucking." See Memo dated March 18, 2008.

At her deposition, when asked why the message recording at the Val P business telephone number said "Louis Alexander Petrosino Trucking," Valerie Petrosino testified "I have no idea." Valerie Petrosino Tr. at 61.

Therefore, as discussed above, the Applicant shared office space, a garage, and a telephone line with many of its predecessor businesses, two of which continued to operate while Val P's Registration Application was pending and were noted on the company's telephone answering machine. See Memo dated February 28, 2007; Memo dated March 1, 2007.

3. The Applicant failed to disclose a principal's interest in other trade waste businesses.

Question 15 of the Registration Application asks, "At any time during the past ten (10) years, has the applicant business or any current principal or past principal of the applicant business ever been a principal in another trade waste business?" See Registration Application at 3. The Applicant responded "No." As discussed above, Louis Petrosino, an undisclosed principal of the Applicant, was a principal of two other trade waste businesses that had previously applied to the Commission for a registration.

Conclusion

Thus, as demonstrated above, the Applicant provided false and misleading information to the Commission in Val P's Registration Application by concealing principals, failing to disclose the sharing of resources, and failing to disclose Louis Petrosino's interest in his other trade waste companies. Additionally, there is substantial evidence that Val P, Poco Loco, and Petrosino Hauling are essentially the same company. Val P was formed and submitted the instant

application shortly after Poco Loco surrendered its registration and Petosino Hauling withdrew its registration application. While the Commission need not prove a motive for such false statements, it is likely that Louis Petrosino and his father, Petrosino Sr., formed Val P and attempted to obtain a registration under Valerie Petrosino's name in an attempt to evade the Commission's rules and regulations rather than come into compliance with them. The Applicant does not contest any of these points. The Applicant's submission of a false application to the Commission demonstrates that the Applicant lacks the requisite good character, honesty and integrity to operate such a business in New York City. For this independently sufficient reason, Val P's Registration Application is denied.

B. The Applicant has failed to demonstrate eligibility for a registration because it repeatedly engaged in unregistered trade waste removal activity

The Commission is authorized to deny the registration application of a company that has engaged in unlicensed carting activity in the City of New York. See Admin. Code §§16-505(a), 16-509(c)(ii), 16-513(a)(i).

Val P has never held a carting license or registration issued by Department of Consumer Affairs, Trade Waste Commission, or Business Integrity Commission, and has never been legally authorized to operate a trade waste business in New York City. Nevertheless, since its inception, the Applicant has continuously operated a trade waste removal business in the city of New York without the requisite legal authority.

On August 31, 2007, at approximately 9:00 a.m., a Commission investigator observed two white dump trucks with the name "Val P Inc." marked on the vehicles collecting debris from an excavation site at Landers Avenue between Arlene Street and Renee Place, in Staten Island, New York. The investigator observed the vehicles take the material to a recycling facility located at 280 Meredith Avenue, Staten Island, New York. The investigator observed each truck load debris from the excavation site and bring it to the recycling facility on three occasions. See Memo from Special Investigator Thomas Rizzo dated 8/31/07.

Again, on June 6, 2008, at approximately 7:30 a.m., a Commission investigator observed a 2003 white Western Star dump truck registered to Val P being used to transport trade waste from Gateway National Recreation Area at the intersection of New Drop Lane and Cedar Grove Road, Staten Island, New York. The investigator observed that there were no BIC-issued license plates on the vehicle.[7] As a result, on August 13, 2008, Val P was charged administratively with operating an unlicensed or unregistered waste removal business in violation of §16-505(a) of Chapter 1, Title 16-A, of the New York City Administrative Code. See Commission Notice of Hearing, TW-2641.

On or about October 3, 2008, the Applicant and the Commission entered into a Stipulation of Settlement, wherein the Applicant admitted that on June 6, 2008, it had operated a business for the purpose of the collection of trade waste without having first obtained the

[7] Upon being registered by the Commission, the Commission issues two license plates for each vehicle that will transport trade waste. See RCNY §7-03.

appropriate license or registration from the Commission, in violation of Admin. Code §16-505(a). In accordance with the Stipulation of Settlement, the Applicant paid the Commission a fine of $2,500. See Stipulation of Settlement, TW-2641.

Further, during her deposition, Valerie Petrosino acknowledged that the company had been continuously operating illegally since its inception in 2006. See Valerie Petrosino Tr. at 23, 47-48, 55-56, 63-64. Additionally, in submissions to the Commission after Valerie Petrosino's testimony, Petrosino Sr. admitted to engaging in unregistered trade waste removal activity. See Petrosino Sr. letter dated March 6, 2008.

Moreover, as noted above, Louis Petrosino filed an application with the Commission on behalf of Louis A. Petrosino, Inc. on September 12, 1996. Further, since at least 2000, his father was authorized to conduct Commission business on Louis Petrosino's behalf. Therefore, at the time the Val P Registration Application was filed, approximately ten years later, both individuals were certainly well aware of the Commission's rules and regulations. Moreover, the Commission told Louis Petrosino verbally and by letter dated February 3, 2006 that Louis Alexander Petrosino Inc., the company that reportedly employed Petrosino Hauling's drivers (and then Val P's), would be required to obtain a Commission-issued registration to operate as a trade waste business in New York City.[8] Consequently, the Applicant can not now claim ignorance of the legal requirement for a Commission-issued registration to haul trade waste in New York City.

Notwithstanding the Commission's rules and regulations and being advised as to how to come into compliance with those rules and regulations, Louis Petrosino withdrew the Petrosino Hauling Registration Application and surrendered his registration for Poco Loco. Then, the Petrosinos formed a new company (while attempting to conceal the involvement of Petrosino Sr. and Louis Petrosino), and operated that company without registering with the Commission and paying the required fees related thereto.

The Applicant's repeated unlicensed activity demonstrates disregard for the Commission's rules and regulations. Moreover, in addition to operating without the appropriate registration, principals of the Applicant affirmatively surrendered a trade waste registration that was issued to Poco Loco and chose to operate under a different unregistered company name. The Applicant does not refute either of these points. Under the circumstances, the Applicant's unlicensed or registered carting is strong evidence of the Applicant's lack of good character, honesty and integrity and merits the denial of its registration application. Accordingly, the Commission denies the Applicant's registration application on this independently sufficient ground.

[8] In submissions to the Commission received April 8, 2008, Petrosino Sr. stated that all the Val P employees that were listed in the Val P Registration Application were in fact paid by Louis Alexander Petrosino Inc. See letter from Petrosino Sr. dated April 5, 2008.

III. 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 Val P falls short of that standard. For the reasons discussed above, the Commission hereby denies the Registration Application of Val P Inc.

This exemption/registration denial decision is effective immediately. The Applicant shall not service any customers or otherwise operate a trade waste removal business in the City of New York.

Dated: March18, 2010

THE BUSINESS INTEGRITY COMMISSION

Michael J. Mansfield
Chairman

John Doherty, Commissioner
Department of Sanitation

Rose Gill Hearn, Commissioner
Department of Investigation

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

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Department of Small Business Services

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