



The City of New York
BUSINESS INTEGRITY COMMISSION
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**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE
LICENSE APPLICATION OF CYCLONE RECYCLING, INC. (BIC #487655) TO
OPERATE AS A TRADE WASTE BUSINESS**

I. PRELIMINARY STATEMENT

Cyclone Recycling, Inc. (“Cyclone” or the “Applicant”) (#487655) has applied to the New York City Business Integrity Commission (the “Commission”) for a license to operate as a trade waste business (the “Cyclone Application”).¹ See Title 16-A of the New York City Administrative Code (the “Administrative Code” or “Admin. Code”), § 16-505(a).

On March 29, 2016, the Commission’s staff issued and served the Applicant with Notice of Grounds to Recommend the Denial of the License Application of Cyclone (the “Notice”). The Applicant was given 10 business days to respond, until April 12, 2016. See 17 Rules of the City of New York (“RCNY”) § 2-08(a). On April 11, 2016, the Applicant submitted a response, which consisted of a two page letter (dated April 4, 2015) from principal Yevgeny Komissarov, and nine pages of business records (collectively, the “Response”).² See Response. The Commission has completed its review of the Cyclone Application, having carefully considered both the Notice and the Response. Based on the record as to the Applicant, the Commission denies Cyclone’s license application because the Applicant lacks good character, honesty and integrity based on the following reason:

- **The Commission denied the renewal application of Cyclone’s predecessor company, Oil Gorillas, Inc., finding that Oil Gorillas lacked good character, honesty, and integrity.**

II. BACKGROUND AND STATUTORY FRAMEWORK

Every commercial business establishment in New York City must contract with a private carting company to remove and dispose of the waste it generates. Historically, the private carting industry in the City was operated as a cartel controlled by organized crime. As evidenced

¹ “Trade waste” or “waste” is defined at Admin. Code § 16-501(f)(1).

² Among the records provided with the Response are a Form 966 (Corporate Dissolution or Liquidation) for the Applicant’s predecessor business, Oil Gorillas, Inc., a Certificate of Dissolution for Oil Gorillas, Inc., a Joint Resolution of the Board of Directors and Shareholders of Oil Gorillas, Inc., and a Plan of Dissolution and Complete Liquidation of Oil Gorillas, Inc. See Response.

by numerous criminal prosecutions, the industry was plagued by pervasive racketeering, anticompetitive practices and other corruption. See, e.g., United States v. International Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993); People v. Ass'n of Trade Waste Removers of Greater New York Inc. et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); United States v. Mario Gigante et al., No. 96 Cr. 466 (S.D.N.Y.); People v. GNYTW, 701 N.Y.S.2d 12 (1st Dep't 1999).

The Commission is charged with, inter alia, combating the pervasive influence of organized crime and preventing its return to the City's private carting industry. Instrumental to this core mission is the licensing scheme set forth in Local Law 42, which created the Commission and granted it the power and duty to license and regulate the trade waste removal industry in New York City. Admin. Code § 16-505(a). This regulatory framework continues to be the primary means of ensuring that an industry historically plagued with corruption remains free from organized crime and other criminality, and that commercial businesses that use private carters can be ensured of a fair, competitive market.

Local Law 42 provides that "[i]t shall be unlawful for any person to operate a business for the purpose of the collection of trade waste . . . without having first obtained a license therefor from the [C]ommission." Admin. Code § 16-505(a). Before issuing such license, the Commission must evaluate the "good character, honesty and integrity of the applicant." Id. at § 16-508(b). The Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making a licensing decision:

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

Id. at § 509(a)(i)-(x). Additionally, the Commission may refuse to issue a license or registration to any applicant who has “knowingly failed to provide information or documentation required by the Commission . . . or who has otherwise failed to demonstrate eligibility for such license under this chapter or any of the rules promulgated pursuant hereto.” Id. at § 509(b). The Commission may refuse to issue a license or registration to an applicant when such applicant was previously issued a license which was revoked or not renewed, or where the applicant “has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license.” Id. at § 509(c). Finally, the Commission may refuse to issue a license or registration to any applicant where the applicant or its principals have previously had their license or registration revoked. Id. at § 509(d).

An applicant for a trade waste license or registration has no entitlement to and no property interest in a license or registration, and the Commission is vested with broad discretion to grant or deny a license or registration application. Sanitation & Recycling Industry, Inc., 107 F.3d at 995; 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).

III. FACTS

During the background investigation into the Cyclone Application, the Applicant all but admitted in its written submissions that it is the successor business to Oil Gorillas, Inc. (BIC #4297) (“Oil Gorillas”). See appendix to Cyclone Application (“Cyclone Appendix”). Both companies are in the same line of business – the removal and transportation of used cooking oil and the cleaning of grease traps. See id. at 1. Both companies have the same principal, Yevgeny Komissarov (“Komissarov”). See id. Both companies have the same office address, mailing address, garage address, and telephone number. See Cyclone Application at 1; Oil Gorillas Application for a Trade Waste License (“Oil Gorillas Initial Application”) at 1; Oil Gorillas Renewal Application for a License or Registration as a Trade Waste Business (“Oil Gorillas Renewal Application”) at 2. In addition, Komissarov’s mother, Olga Komissarova, who is now disclosed as a principal and treasurer of the Applicant, was employed by Oil Gorillas as a “phone operator.” See Olga Komissarova’s June 2, 2015 Disclosure Form for Principal of a Trade Waste Business at 4. Because of the clear connection between Cyclone and Oil Gorillas, the history of Oil Gorillas and the reasons the Commission denied its license renewal application is relevant to the Commission’s review of the Cyclone Application. A summary of that history is set forth below.

Oil Gorillas

On January 12, 2012, Oil Gorillas applied to the Commission for a trade waste removal license. See Oil Gorillas Initial Application. Oil Gorillas disclosed Komissarov as its sole principal and 100% owner in the Oil Gorillas Application. See Oil Gorillas Initial Application at 20. On February 10, 2012, the Commission granted Oil Gorillas a trade waste license. See Oil Gorillas Licensing Order.

On February 25, 2014, Oil Gorillas filed a renewal application with the Commission. See Oil Gorillas Renewal Application. Komissarov was disclosed as sole principal and 100% owner in the Oil Gorillas Renewal Application. See Renewal Application at 7. The Commission’s staff conducted an investigation of Oil Gorillas in connection with the Oil Gorillas Renewal Application. As part of the investigation, on December 19, 2014, Komissarov provided the Commission with sworn testimony. See Yevgeny Komissarov Transcript of Sworn Statement. On February 17, 2015, the staff issued a Notice of the Grounds to Recommend the Denial of the License Renewal Application of Oil Gorillas (the “Oil Gorillas Notice”). On March 2, 2015, Oil Gorillas submitted to the Commission a response, which consisted of an eight page letter from principal Komissarov, and 14 appendices that included business records, updated information to the application, and a letter of reference. See March 2, 2015 Oil Gorillas Response. After considering both the Oil Gorillas Notice and Oil Gorillas’ response, on March 6, 2015, the Commission found that Oil Gorillas lacked good character, honesty, and integrity, and denied its license renewal application. See Decision of the Business Integrity Commission to Deny the

License Renewal Application of Oil Gorillas, Inc. a License as a Trade Waste Business, dated March 6, 2015 (the “Oil Gorillas Denial Decision”).

The Oil Gorillas Denial Decision

In denying Oil Gorillas’ application for renewal of its trade waste license, the Commission found that Oil Gorillas lacked good character, honesty, and integrity based on the following independent grounds: (1) Adam Borisuk was an undisclosed principal of the Applicant; (2) the Applicant knowingly failed to maintain and provide information and/or documentation required by the Commission; (3) the Applicant provided the Commission with false and misleading information; and (4) the Applicant violated Local Law 42 of 1996 by illegally transferring its license to numerous individuals and unlicensed companies. See Oil Gorillas Denial Decision.

1. Adam Borisuk was an undisclosed principal of Oil Gorillas.

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, 860 N.Y.S.2d 103 (1st Dept. 2008).

Question 13 of the Oil Gorillas Initial Application (filed on January 12, 2012) sought information about all principals of the Applicant: “On Schedule A, identify all individuals who are principals of applicant business and provide the information requested.” See Oil Gorillas Initial Application at 3. Oil Gorillas disclosed one principal on Schedule A of the Oil Gorillas Initial Application – “Yevgeny Komissarov” See id. 20. Similarly, Schedule A of the Oil Gorillas Renewal Application (filed on February 25, 2014) directed Oil Gorillas to “identify all persons who are current principals of the licensee or registrant, including but not limited to directors, officers and stockholders.” See Oil Gorillas Renewal Application at 7. Oil Gorillas falsely disclosed one principal on Schedule A of the Oil Gorillas Renewal Application – “Yevgeny Komissarov.” See Oil Gorillas Renewal Application at 7. Adam Borisuk’s name did not appear anywhere in either application submitted by Oil Gorillas. See Oil Gorillas Initial Application; Oil Gorillas Renewal Application.

The definition of “principal” (which is included in the instructions 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. See Admin. Code § 16-501(d) (emphasis added).

Komissarov’s December 19, 2014 sworn testimony established that Komissarov had little or no control of Oil Gorillas and that Adam Borisuk participated directly in the control Oil Gorillas. See Oil Gorillas Denial Decision. The failure of Oil Gorillas and Komissarov to provide truthful and non-misleading information to the Commission about who was a principal of the company was evidence that Oil Gorillas and Komissarov lacked good character, honesty and integrity. As Borisuk was a person who participated directly or indirectly in the control of Oil Gorillas, he was a principal and was not disclosed as such to the Commission in any of the

applications submitted by Oil Gorillas. The Commission denied the Oil Gorillas Renewal Application based on this independently sufficient ground. See Admin. Code §§ 16-509(b); 16-509(a)(i).

2. Oil Gorillas knowingly failed to maintain and provide information and/or documentation required by the Commission.

“The Commission may refuse to issue a license or registration to an applicant for such license or an applicant for registration who has knowingly failed to provide the information and/or documentation required by the Commission” See Admin. Code § 16-509(b). Beginning in October 2014, the Commission directed Oil Gorillas to produce books and records that it was required to maintain. Although Komissarov initially stated that Oil Gorillas maintained and would produce the books and records, ultimately, Oil Gorillas, through its attorney, produced only some of the required books and records. The Commission advised Oil Gorillas that its failure to provide this information and documentation could be considered as a ground on which to deny Oil Gorillas’ renewal application. See December 9, 2014 email from Commission staff attorney David Mandell to Scott Klein. Notwithstanding this warning, Oil Gorillas did not provide the required information and documentation. Thus, the Commission based its denial of Oil Gorillas’ renewal application, in part, on Oil Gorillas’ failure to provide information and documentation in connection with the license renewal application to the Commission.

3. Oil Gorillas provided the Commission with false and misleading information.

The Commission may refuse to issue a license to an applicant who has failed “to provide truthful information in connection with the application.” See Admin. Code § 16-509(b). Komissarov submitted false and misleading information in the Oil Gorillas Application and in the Oil Gorillas Renewal Application that were filed with the Commission.

Komissarov certified that the information contained in the Oil Gorillas Initial Application and in the Oil Gorillas Renewal Application was complete and truthful. See Oil Gorillas Application at 33; See Oil Gorillas Renewal Application at 12. Yet, in addition to Borisuk’s name not appearing in both the Oil Gorillas Initial Application and the Oil Gorillas Renewal Application, Komissarov failed to disclose to the Commission the existence of employees, telephone numbers, addresses, and email addresses used by Oil Gorillas, despite being asked to do so in both applications. See Oil Gorillas Denial Decision at 6-10. The failures to disclose that information constituted material omissions on the applications, rendering the information in the application false and misleading.

The false and misleading information in Oil Gorillas’ applications demonstrated that Oil Gorillas and Komissarov lack the requisite good character, honesty and integrity to operate a trade waste business in New York City. For this independently sufficient reason, the Commission denied the renewal application filed by Oil Gorillas.

4. Oil Gorillas violated Local Law 42 1996 by illegally transferring its license to numerous individuals and unlicensed companies.

“A license or registration issued pursuant to this chapter . . . shall not be transferred or assigned to any person or used by any person other than the licensee or registrant to whom it was issued.” See Admin. Code § 16-505(c). Komissarov admitted to the Commission that Oil Gorillas allowed its trade waste hauling license to be transferred to others in violation of Local Law 42 of 1996 and its corresponding rules. The scheme to transfer the license was organized as follows: Oil Gorillas and Komissarov engaged in a scheme whereby vehicle titles were transferred to Oil Gorillas. Komissarov then registered and insured these vehicles in the name of Oil Gorillas. Next, Oil Gorillas and Komissarov disclosed these vehicles to the Commission in order to receive Commission issued trade waste license plates. Although each of these vehicles and the vehicles’ operators held themselves out to the public and to the Commission as being part of Oil Gorillas, in reality, each of these vehicle operators were working for themselves and Oil Gorillas and Komissarov had little or no control over any of them. This arrangement violated the Commission’s regulations and rules. For this independently sufficient ground, the Commission denied the Oil Gorillas Renewal Application.

The Cyclone Recycling Inc. License Application

Less than two months after the Commission denied the Oil Gorillas license renewal application, on or about April 29, 2015, the Applicant was incorporated. See Cyclone Application at 3. And then, on June 2, 2015, less than three months after the Commission denied the Oil Gorillas license renewal application, the Applicant applied to the Commission for a trade waste removal license. See Cyclone Application.

Cyclone is virtually identical to Oil Gorillas. First, as noted above, the Applicant disclosed Komissarov as a principal and 100% owner of the Applicant. See Cyclone Application at 54. The Administrative Code provides that the term “Applicant” means, “if a business entity submitting an application for a license, . . . the entity and each principal thereof.” See Admin. Code § 16-501(a). Thus, when the Commission found that Oil Gorillas lacked good character, honesty and integrity, the Commission also found that Komissarov lacked good character, honesty and integrity because Komissarov was a principal of Oil Gorillas.

The Applicant also disclosed Komissarov’s mother, Olga Komissarova as the Applicant’s treasurer. See id. In the Cyclone Appendix, Komissarov admitted, among other things, that he (1) “was also the owner of Oil Gorillas”; (2) was responsible for the Commission’s denial of the Oil Gorillas renewal application; (3) was “a disorganized mess who did not understand the importance of properly and accurately maintaining books and records”; (4) “did not understand the importance of disclosing all information relating to the business”; and (5) “did not fully and thoroughly review and understand” the [Commission’s] law and rules. See Cyclone Appendix at 1-3. Thus, the Applicant all but admits that it is the successor business to Oil Gorillas and completely disregarded the Commission’s regulations and rules in the course of operating Oil Gorillas. Ignorance and disregard for the Commission’s rules and regulations does not excuse the Applicant’s conduct here and cannot serve as a valid defense to the Commission’s concerns.

IV. ANALYSIS

The Application should be denied because the Commission denied the renewal application of Cyclone's predecessor company, Oil Gorillas, Inc., finding that Oil Gorillas lacked good character, honesty, and integrity.

In denying Oil Gorillas' earlier application for renewal of a trade waste license, the Commission found that Oil Gorillas lacked good character, honesty, and integrity based on four independently sufficient grounds. See supra at 5. Cyclone is virtually identical to and is clearly nothing more than the successor business of Oil Gorillas, whom the Commission previously found to lack good character, honesty and integrity.

In the Response, the Applicant claims, without providing any evidence, that Cyclone is not "the successor company of Oil Gorillas, Inc." Response at 1. The Applicant also attached a number of documents to the Response to establish that Oil Gorillas is no longer in business. See Response at 3-11. Even if true, the fact that Oil Gorillas is no longer in business does nothing to dispute the assertion that the Applicant is the successor business to Oil Gorillas. Instead, it may provide the explanation as to why Cyclone was formed: as a successor to Oil Gorillas. In the Response, the Applicant states: (1) that it intends to operate "under a completely different structure," (2) that it will be run "under a completely different governance and operating structure," and (3) that it will "function under a different operating structure" from Oil Gorillas. See Response at 1-2. However, the Applicant has provided no specifics as to what this supposed "different structure" is. Therefore, we find the Applicant's claims that Cyclone is a wholly separate company from Oil Gorillas to be unpersuasive.

The Response also repeats some of the admissions that were submitted in the Cyclone Appendix: that Komissarov "made many mistakes" as the principal of Oil Gorillas and that Komissarov was both ignorant of and disregarded the Commission's rules. See Response at 1-2. Komissarov attempts to assure the Commission that he will not make the same mistakes again. See Response at 2. However, we find this unsupported, self-serving statement to be unconvincing.

The Cyclone Application does not include any information that should lead the Commission to change its prior decision with respect to Oil Gorillas and its principals or to conclude that Cyclone is anything but a successor business to Oil Gorillas. Therefore, for all of the independently sufficient reasons that the Commission denied Oil Gorillas' license renewal application, the Commission now also denies Cyclone's license application.

V. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license to any applicant who it determines to be lacking in good character, honesty and integrity. The record, as detailed above, demonstrates that the Applicant lacks those qualities. Accordingly, the Commission denies Cyclone Recycling Inc.'s license application.

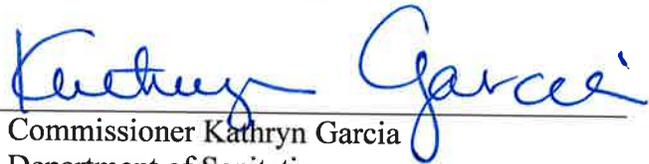
This license application denial decision is effective immediately. The Applicant shall not service any customers, or otherwise operate as a trade waste removal business in the City of New York.

Dated: June 22, 2016

THE NEW YORK CITY
BUSINESS INTEGRITY COMMISSION



Daniel D. Brownell
Commissioner and Chair



Commissioner Kathryn Garcia
Department of Sanitation



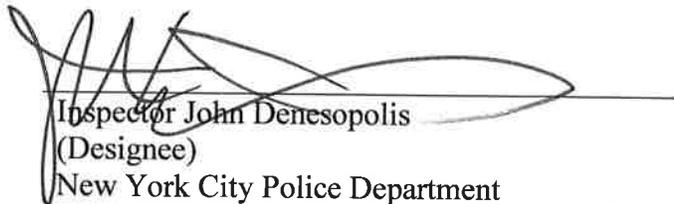
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