



Legal
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THE CITY OF NEW YORK
TRADE WASTE COMMISSION
253 BROADWAY, 10TH FLOOR
NEW YORK, NEW YORK 10007

**DECISION OF THE TRADE WASTE COMMISSION DENYING
THE APPLICATION OF PAPER RECYCLING CORPORATION
FOR A LICENSE TO OPERATE AS A TRADE WASTE BUSINESS**

I. INTRODUCTION

Paper Recycling Corporation ("Paper Recycling" or the "applicant") has applied to the New York City Trade Waste Commission for a license to operate as a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code") §16-508. Pursuant to Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs (the "DCA") for the licensing and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code §16-503. 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.

Local Law 42 expressly authorizes the Commission to refuse to issue a license to any applicant who has knowingly failed to provide information or documents required by the Commission pursuant to the statute or implementing regulations. See Admin. Code §16-509(b). Both statute and regulation authorize the Commission to investigate matters within its jurisdiction, including license applications. See Admin. Code §16-504(c); 17 RCNY §§ 2-01(a), (d). Because Paper Recycling has knowingly failed to provide the Commission with documents and information it requires to conduct a thorough and complete background investigation of this applicant

and to determine the truth and accuracy of its submissions, its license application is denied.

II. FACTS

By application (no. 00065) submitted August 29, 1996, Paper Recycling applied to the Commission for a license to operate as a trade waste business. The applicant has held a DCA license since April 1996, which license has remained valid pending the Commission's determination of this license application.

A. The Written Application

In its written application, Paper Recycling denied that it had any indebtedness, including loans, in excess of \$5,000. Lic. App. at 18. Similarly, the applicant entered "N/A" on those schedules in the application which required it to list all loans owed by the applicant business. Schedule P, Lic. App. at 37. The applicant's president, Chung Won Cho, entered "N/A" in the portion of his principal disclosure form that required him to identify any real property interests. Schedule F, Principal Disclosure Form, at 13.

B. The Applicant's President's Deposition

Pursuant to the Commission's statutorily conferred authority to compel the attendance of witnesses and take sworn testimony to investigate the truth and accuracy of the applicant's submissions, the Commission staff conducted a deposition of Mr. Cho on April 16, 1997. See Admin. Code § 16-504; 17 RCNY §§ 2-01(a), (d). Cho was accompanied at the deposition by an advisor, Michael Limb. During the deposition, Cho stated that he was the sole principal of the applicant and that he capitalized the company with approximately \$50,000. When questioned about the source of those funds, Cho stated that he had borrowed some of the money from his restaurant business, Point Terminal Foods, Inc. ("Point Terminal"), of which he is the sole principal, and that he also used some of his "own" money. Cho then stated somewhat contradictorily that, in fact, he had borrowed the entire \$50,000 from Point Terminal. However, he did not execute any documents memorializing the loan; nor could he state the repayment terms.

The Commission staff also questioned Mr. Cho about the source of capital funds for his restaurant business, which was incorporated in 1981. Cho stated that he started that company, too, with \$50,000 he obtained in part from personal savings and in part by borrowing from friends. During the deposition, Cho was asked to submit to the Commission documents memorializing the transfer of funds from his restaurant business account to the applicant's bank account and any other documents identifying the origin of the applicant's capital.

The Commission staff also questioned Mr. Cho about his residential real estate holdings, including the existence of any properties from which he realized rental income. Cho stated that he and his wife purchased their current residence in Englewood Cliffs, New Jersey, approximately fourteen years ago, and that they bought it outright for \$650,000 cash with no mortgage. Only the name of his wife, Shelly Yee Lee, appears on the title to the property, according to Cho. Cho stated that the couple took out a mortgage on the property approximately ten years ago; but Cho was not certain of the mortgage amount, although he stated it might have been for \$150,000. He believed the remaining balance -- some \$100,000 -- would be satisfied in approximately five years. Cho could not identify the source of the funds with which his wife purchased the couple's home; he speculated that she may have sold one home that she owned in Korea and another that she owned in New York, with each sale netting approximately \$300,000 to \$350,000. Cho stated that the couple also jointly owns a condominium in Fort Lee, New Jersey, which they rent to a corporation -- whose name Cho could not recall -- for \$3,000 per month.

C. The Commission's Further Investigation

Upon review of Paper Recycling's written application submissions, its DCA file, Mr. Cho's deposition testimony, and other investigative materials, several discrepancies were readily apparent. For example, the applicant's written representation that it had no indebtedness in excess of \$5,000 was contradicted by Cho's testimony that he or his restaurant business had loaned the applicant all or part of its \$50,000 starting capital.

See Lic. App. at 18.¹ Similarly contradictory was the applicant's entry of "N/A" on those schedules in the application which required it to list all loans owed by the applicant business. See Schedule P, Lic. App. at 37. Furthermore, Cho's deposition testimony that he had an ownership interest in an income-producing residential property in New Jersey contradicted his entry of "N/A" in the portion of his principal disclosure form that required him to identify his real property interests. See Schedule F, Principal Disclosure Form, at 13. Finally, the Commission's investigation revealed that Cho's restaurant business had numerous overdue tax obligations.

D. The Commission's Requests for Information and the Applicant's Failures to Comply

On May 13, 1997, the Commission wrote to the applicant to request additional information in connection with its investigation. Specifically, the Commission staff requested (1) proof that Point Terminal had satisfied any and all outstanding tax, regulatory, and administrative obligations; (2) additional information concerning Point Terminal's alleged "loan" to the applicant company of \$50,000 for start-up capital, including, but not limited to, canceled checks, deposit slips, loan agreements, or other documents memorializing the transfer of funds from one company to the other; and (3) additional information about the source and amount of the funds used to purchase Mr. Cho's and his wife's residence "outright" for \$650,000.

After still further investigation, and having received no response to its May 13, 1997 letter, the Commission staff wrote again to the applicant on June 2, 1997. In that letter, the staff requested additional information about the nature of Point Terminal's business activities, Shelly Yee Lee's employment history, and whether Mr. Cho or any of his immediate family members maintained any safe-deposit boxes or off-shore accounts. The applicant failed to respond to or acknowledge this inquiry as well. Consequently, the staff wrote to the applicant again on June 17, 1997, enclosing copies of its earlier requests for information and reiterating those requests. Almost three months later, the applicant still had not complied with the staff's requests for information. Thus, on September 5, 1997, the staff notified the applicant by certified mail, return receipt requested, that, if

¹ If Cho, the applicant's sole principal, is an obligor on the mortgage of Cho's current residence, this statement of nonindebtedness also is false on that ground.

the information requested in its letters of May 13, June 2, and June 17 was not supplied by September 19, 1997, the applicant's license would be denied pursuant to Administrative Code §16-509 (b).

On September 17, 1997, the applicant submitted a notarized letter to the Commission that was only partially responsive to the staff's inquiries. In the applicant's response Mr. Cho stated:

Point Terminal Foods, Inc. has an outstanding loan with Paper Recycling Corporation. Please note that the loan is a verbal one and is not covered by any written agreement. This is not at all surprising considering that I am a part-owner of Point Terminal Foods, Inc. and Paper Recycling Corp.

The applicant also requested an extension of three months, until December 17, to clear up its tax liabilities to the City of New York.

By letter dated October 31, 1997, the Commission notified the applicant that its September 17 submission was insufficient and that it must supply additional information fully responsive to the staff's inquiries. In that letter, the applicant was informed that, even if it did not execute a note or other formal documents with respect to the loan, it should supply such other documentation as would necessarily have been generated in connection with the loan, including canceled checks, deposit slips, or other documents memorializing the transfer of funds. In addition, the staff reiterated its request for specific information concerning the source of the roughly \$650,000 cash with which Shelly Yee Lee purchased the couple's current residence. The applicant was advised that if the information was not submitted by November 15, 1997, Paper Recycling's application would be denied.

Although the applicant's next submission was untimely, the Commission nevertheless evaluated the response. In that letter, dated November 19, 1997, Mr. Cho wrote:

Pertaining to the \$50,000 loan, I would like to reiterate my position that the \$50,000 was a loan of the corporation to me which is not reduced into writing because of the fact that I

am the "owner" and majority stock holder of the corporation. I did not think at that time that I should reduce the loan into writing since I have every intention to repay said loan to the company. This is the reason why there is no written evidence of the loan. I am acknowledging that I am personally indebted to the company. I cannot give any documents for the said loan because there is no written proof of the same. I cannot give what I do not have.

Cho did not acknowledge the Commission staff's directive that he provide bank records and other documents that necessarily would have been generated from the transfer of such a significant sum of money.

Regarding his current home, Mr. Cho stated:

My residence was purchased through the money advanced by my wife and my mother-in-law. From what I remember, about 14 years ago, my wife sold her property in New Jersey amounting to about \$300,000. The balance of the amount we need [sic] to buy our present house which amounted to about \$300,000 was advanced by my mother-in-law in South Korea. I have no idea how my mother-in-law raised the amount to give us to enable us to buy the house. Because of the lapse of time involved and because it was my wife's and mother-in-law's money . . . I have no right to require them to produce any proof or document evidencing the sale of my wife's property in New Jersey nor have I the right to ask my mother-in-law how or in what manner she raised the money to help us in buying the house. After all it was their money and not mine which was used to buy the house.

On November 25, 1997, the Commission staff again wrote to the applicant and advised Mr. Cho that, if he could not supply documents relating to the purchase of his current residence, he must submit an explanation of what reasonable steps he took to obtain such documentation. Cho also was advised a fourth time to produce canceled checks, deposit slips, bank statements, or any other documents relating to Point Terminal's alleged loan to the applicant of \$50,000. The staff also noted that it still

was not clear from Cho's vague representations what role he, the applicant company, and Point Terminal Foods each played in the loan transaction. The applicant was advised to produce the information no later than December 12, 1997.

Under cover of a letter dated December 9, 1997, Mr. Cho submitted only a copy of a 1985 contract for Shelly Yee Lee's sale of real property located in Old Tappan, New Jersey, for the sum of \$305,000. Cho produced no title or other documents relating to the purchase or financing of his current residence or to support his claim that the couple received \$300,000 - \$350,000 originating in South Korea.

Regarding the \$50,000 loan to the applicant, Mr. Cho's December 9 letter raised still more questions regarding the transaction and the applicant's capitalization. Cho wrote:

With regard to the \$50,000 loan I got from Point Terminal Food, Inc., please be informed that the loan was in cash and that there is no written proof of the same since I am the borrower and also the "owner" and *majority* stock holder of the lending corporation. I did not think I needed to make a contract or written memorandum at that point in time. I am not evading any responsibility for the loan, as in fact, I am acknowledging the same. * * * The money which I invested *together with other money from other investors* was used to purchase baler machines, trucks, a forklift and other office supplies.

(Emphasis added).

III. DISCUSSION

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 that the Commission is vested with broad discretion to grant or deny a license application. Sanitation and Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 995 (2d Cir. 1997); 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). As noted above, Local Law 42 expressly authorizes the Commission to refuse to issue a license to any applicant who knowingly fails to provide information or documents required by the Commission pursuant to that statute or any of its implementing regulations. See Admin. Code §16-509(b).

Pursuant to its statutory and regulatory authority, the Commission staff sought, through the applicant's principal's deposition and written inquiries to the applicant, to investigate this license applicant. Indeed, the Commission is expressly authorized to compel the attendance of witnesses for examination under oath, and to require the production of books, accounts, papers, and other evidence relevant to its investigations, in order to determine the truth and accuracy of an applicant's submissions. Admin. Code §16-504(c); 17 RCNY §2-01(a).

However, as the foregoing account of the Commission staff's nine-month effort to obtain specific information from this applicant reveals, Paper Recycling has repeatedly refused to provide the most basic documents relating to such fundamental matters as its capitalization and its principal's finances. Obviously, the transfer to the applicant of \$50,000 -- even in the absence of a written loan agreement -- would be documented, at a minimum, by the company's bank statements, deposit slips, and general ledger, and the applicant was so advised. DCA regulations applicable to this applicant, as the holder of a DCA license, expressly required it to maintain general ledger records showing the details of its loans and notes payable and receivable for a period of three years. See 6 RCNY §2-183(d). Despite the staff's four express written requests for such records, Mr. Cho responded only that he "acknowledged" the loan.

Equally troubling are the applicant's concessions in its November 19 and December 9 submissions that Mr. Cho is only Point Terminal's *majority* stockholder, and that Paper Recycling was capitalized, in part, by "other investors" whom the applicant fails to identify. This statement flatly contradicts Cho's deposition testimony and his earlier written representations that he is the sole principal, shareholder, and investor in Paper Recycling. Further, the applicant denied in its written application and disclosure forms that it had received any loans or gifts exceeding \$5,000.

The applicant also continued for nine months to skirt the issue of how Mr. Cho and his wife obtained the better part of \$650,000 cash to purchase their home. The source of these significant funds, like those with which Cho capitalized Paper Recycling, is required to be disclosed so that the Commission can ascertain whether the funds were obtained and transferred lawfully. The applicant's refrain that it acknowledges the indebtedness -- which acknowledgment it claims should satisfy the Commission staff's inquiry -- merely begs the question.

The Commission staff has identified with specificity the records the applicant could produce to document the source and path of the funds used to capitalize Paper Recycling. All of those records should be readily obtainable by the applicant. The Commission staff also directed the applicant to explain what reasonable steps it had taken to obtain any requested documents it was not successful in acquiring. Because the applicant has neither produced the documents nor explained its failure to produce them, the Commission concludes that the applicant's failure is knowing.²

IV. CONCLUSION

Paper Recycling has knowingly failed to provide the Commission with documents and information required to conduct a thorough and complete background investigation of this applicant and to determine the truth and accuracy of its submissions. Accordingly, its license application is denied.

This license denial decision is effective fourteen days from the date hereof. In order that Paper Recycling's customers may make other carting arrangements without an interruption in service, Paper Recycling is directed

² A review of Paper Recycling's DCA file further confirms that the Commission's concerns about this applicant's financial records are not without basis. An 1996 auditor's report prepared in connection with the applicant's then-pending DCA license application states:

On February 26, Paper Recycling purchased a used vehicle for the sum of \$7036.00. The extent to which this size vehicle has the capability of providing the service to be undertaken we are unable to ascertain. Neither does the business account reflect whether this amount was paid out or financed by an external source. We remain a little skeptical with respect to the source of financing.

(i) to continue servicing its customers for the next fourteen days in accordance with its existing contractual arrangements, and (ii) to send a copy of the attached notice to each of its customers by first-class U.S. mail by no later than February 13, 1998. Paper Recycling shall not service any customers, or otherwise operate as a trade waste removal business in New York City, after the expiration of the fourteen-day period.

Dated: New York, New York
February 10, 1998

THE TRADE WASTE COMMISSION



By: Edward Ferguson, Chair



THE CITY OF NEW YORK
TRADE WASTE COMMISSION
253 BROADWAY, 10TH FLOOR
NEW YORK, NEW YORK 10007

February 10, 1998

**NOTICE TO CUSTOMERS OF PAPER RECYCLING CORP.
REGARDING TERMINATION OF CARTING SERVICE**

Dear Carting Customer:

The New York City Trade Waste Commission, which regulates private carting companies in the City, has denied the application of Paper Recycling Corporation ("Paper Recycling") for a license to collect trade waste. **As of February 25, 1998, Paper Recycling will no longer be legally permitted to collect waste from businesses in New York City. If Paper Recycling is collecting your waste, you will have to select another carting company to provide you with that service by February 25, 1998.**

We have notified more than 300 carting companies that are legally permitted to collect waste from businesses in New York City that you will need a new carting company soon. **You should obtain at least four or more price quotes from new carting companies before you sign a new carting contract.** This way you will ensure that you get the lowest-cost contract. Of course, you do not have to sign a written contract at all. You can have an oral agreement, you can enter into an agreement that is terminable on 30-days notice, or you can enter into a contract of any length up to two years. Before you lock yourself into a contract, however, make sure you have received several price quotes. According to a recent survey, most customers that received four or more price quotes **cut their bills by half or more.**

The Commission has directed Paper Recycling to continue providing service to its customers through February 24, 1998. **If your service is interrupted before February 24, call the Commission at 212-676-6275.**

There are several ways that you can find out which carting companies are willing to service customers in your neighborhood:

- **Find out which company is servicing your neighbor. A carting company cannot, without a business justification**

satisfactory to the Commission, refuse to service you if it already has another customer that is located within 10 blocks of your business. You can find out which carting companies service your area by looking at the **carting stickers** that many businesses display on their store-fronts.

- Consult public directories, such as the Yellow Pages.
- Call the Commission at 212-676-6275.

You have many rights under Local Law 42 of 1996, which Mayor Rudolph W. Giuliani signed in 1996 to address the corruption and anticompetitive practices that have long plagued the commercial waste industry in New York City, including:

- The right to be offered a contract by your carting company. A **form carting contract** that has been approved by the Commission is enclosed for your convenience.
- The right to be charged a reasonable rate for waste removal services. The City sets the maximum rates that carting companies can charge. The City last year reduced the maximum rates for the removal of trade waste to **\$12.20 per loose cubic yard** and \$30.19 per pre-compacted cubic yard. Most businesses dispose of loose waste; only businesses that have trash-compactors dispose of pre-compacted waste. Under the new rule, businesses that dispose of loose trash in bags filled to 80% of capacity (as many businesses do) may not be legally charged more than:

\$2.66 for each 55 gallon bag of trash
\$2.42 for each 50 gallon bag of trash
\$2.17 for each 45 gallon bag of trash
\$1.93 for each 40 gallon bag of trash
\$1.59 for each 33 gallon bag of trash
\$1.45 for each 30 gallon bag of trash

- The new rates are only **maximum** rates. Customers are encouraged to “shop around” and get bids from four or more carting companies to find a good price. Businesses should be able to get rates below \$10.00 per loose cubic yard and \$25.00 per pre-compacted cubic yard.

If you have any questions or complaints about commercial waste hauling in New York City, call the Commission at 212-676-6275.


Edward T. Ferguson, III
Chair and Executive Director