

Business Integrity Commission Meeting
June 22, 2016

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THE CITY OF NEW YORK
BUSINESS INTEGRITY COMMISSION
COMMISSION HEARING

June 22, 2016
100 Church Street
New York, New York
10:43 a.m.

Reported By:

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A P P E A R A N C E S

Commissioner Daniel Brownell, Business Integrity
Commission

Commissioner Kathryn Garcia, Department of Sanitation

Deputy General Counsel, Chantal Senatus, Department
of Investigation (Designee)

Deputy Commissioner Andrew Schwartz, Department of
Small Business Services (Designee)

Inspector John Denesopolis, New York City Police
Department (Designee)

Deputy Commissioner/General Counsel, Noah D. Genel,
Business Integrity Commission

Assistant Commissioner, Sandra Abeles, Department of
Consumer Affairs

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MR. GENEL: Good morning, everyone.
Today is June 22, 2016. The time is
10:45 a.m. We are at 100 Church Street in
New York City on the second floor. I would
like to welcome you to a meeting of the New
York City Business Integrity Commission. I
am Noah Genel, Deputy Commissioner of Legal
Affairs and General Counsel for the
Commission.

I'm joined by the following
Commission members: Daniel Brownell,
Commissioner and Chair of the Business
Integrity Commission; Department of
Sanitation Commissioner, Kathryn Garcia;
Deputy General Counsel for the Department
of Investigation, Chantal Senatus,
representing DOI Commissioner Mark Peters;
Assistant Commissioner Sandra Abeles of the
Department of Consumer Affairs,
representing Lorelei Salas; Deputy
Commissioner for Legal and Regulatory
Affairs, Andrew Schwartz of the Department
of Small Business Services, representing
Commissioner Gregg Bishop; and New York

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City Police Department Inspector
John Denesopolis, representing Police
Commissioner William Bratton.

There are a number of items on our
agenda today, which can be separated
roughly into two categories: Rules and
applications. We have three rules to
consider, along with an added agenda item
which I'll get to in a few minutes. We
will then turn to the applications of which
there are seven to consider.

At the outset, I note that all of
the rules that will be considered were
posted and publicly available on the BIC
website beginning on June 14, 2016, and
continuing through today. In addition, in
accordance with applicable procedural law,
copies of the rules were e-mailed to each
of the Commissioners on June 13, 2016.

The first rule to consider is a
proposed rule that would delegate to the
Commissioner and Chair of the Business
Integrity Commission the function of
beginning the rulemaking process, including

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1 Proceedings

2 those procedures applicable under the City
3 Administrative Act, also known as CAPA.
4 Under this proposed rule, the Commission
5 may draft or direct others to draft
6 proposed rules that the Commissioner deems
7 necessary to carry out the policies and
8 objectives of BIC, publish the proposed
9 rules and have a public hearing on them.
10 No rule may be promulgated except by a
11 majority vote of the members of the
12 Commission.

13 Do any of the Commissioner have any
14 questions or comments regarding this
15 proposed rule?

16 (No response.)

17 MR. GENEL: Is there a motion to
18 bring the proposed rule up for a vote?

19 MS. GARCIA: So moved.

20 MR. GENEL: Is there a second?

21 MR. SCHWARTZ: Second.

22 MR. GENEL: At this time, we're
23 going to vote "Yes" or "No" on this
24 proposed rule. A vote of "Yes" is an
25 indication that you approve of the rule

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moving forward through the CAPA process, whereby it will be published and a public hearing on the rule will be held. A vote of "No" is an indication that you do not approve the rule. The rule must pass by a majority vote. I ask that we go through the vote in order of seating from my left to right.

How do the Commission members vote?

MS. ABELES: Yes.

MS. SENATUS: Yes.

MS. GARCIA: Yes.

MR. BROWNELL: Yes.

MR. DENESOPOLIS: Yes.

MR. SCHWARTZ: Yes.

MR. GENEL: Let the record reflect that the vote is unanimous in favor of the rule.

The next rule to consider is a final rule that would amend the rate cap under New York City Rules and Regulations Section 5-02(a). BIC is required by its rules to review the rate cap every two years. The rate cap was last adjusted in

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1 Proceedings

2 2013. The rule currently under
3 consideration would raise the rate cap by
4 3.3 percent to \$18.87 per cubic yard or
5 \$12.38 per 100 pounds.

6 Do any of the Commissioners have any
7 questions or comments regarding this rule?

8 (No response.)

9 MR. GENEL: Seeing none.

10 Is there a motion to bring this
11 proposed rule up for a vote?

12 MR. BROWNELL: Yes.

13 MR. GENEL: Second?

14 MR. DENESOPOLIS: Second.

15 MR. GENEL: At this time we are
16 going to vote "Yes" or "No" on this rule.
17 A vote of "Yes" is an indication that you
18 approve of the publication of the final
19 rule. The rule would go into effect 30
20 days after publication. A vote of "No" is
21 an indication that you do not approve of
22 the rule.

23 Let's go through from left to right
24 again. How do the Commission members vote?

25 MS. ABELES: Yes.

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1 Proceedings

2 MS. SENATUS: Yes.

3 MS. GARCIA: Yes.

4 MR. BROWNELL: Yes.

5 MR. DENESOPOLIS: Yes.

6 MR. SCHWARTZ: Yes.

7 MR. GENEL: Let the record reflect
8 that the vote is unanimous in favor of the
9 rule.

10 The next and last rule amendment to
11 consider relates to commercial recycling
12 and organics collection. The Department of
13 Sanitation recently amended its rules in
14 several respects regarding commercial
15 recycling and organics collection. Those
16 new rules go into effect later this summer.
17 As you know, BIC's rules overlap
18 considerably with the Department of
19 Sanitation's rules. The rules currently
20 under consideration were drafted to ensure
21 that BIC's rules remain in synch with the
22 Department of Sanitation's rules on these
23 matters.

24 Do any of the Commissioners have any
25 questions or comments regarding these

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1 Proceedings

2 amendments?

3 (No response.)

4 MR. GENEL: Seeing none.

5 Is there a motion to bring these
6 proposed amendments up for a vote?

7 MR. SCHWARTZ: So moved.

8 MR. GENEL: Is there a second?

9 MS. SENATUS: Second.

10 MR. GENEL: At this time, we're
11 going to vote "Yes" or "No" on these
12 amendments. We'll go from my right down
13 the line.

14 How do the Commissioners vote?

15 MR. SCHWARTZ: Yes.

16 MR. DENESOPOLIS: Yes.

17 MR. BROWNELL: Yes.

18 MS. GARCIA: Yes.

19 MS. SENATUS: Yes.

20 MS. ABELES: Yes.

21 MR. GENEL: Let the record reflect
22 that the vote is unanimous in favor of the
23 rule.

24 We have an added item to the agenda
25 today. In addition to the new rules and

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2 amendments to the rules that the Commission
3 just considered, we have a preliminary item
4 related to legislation. In November of
5 2015, the Business Integrity Commission,
6 along with its law enforcement partners the
7 New York City Police Department, the
8 Department of Investigation and the
9 Manhattan DA's Office, concluded a
10 two-year-long investigation into systemic
11 fraud in the heating oil delivery industry.

12 Nine companies and 44 individuals
13 were indicted for participating in a scheme
14 to steal heating oil from customers by
15 charging for oil that was never delivered.
16 The scheme is called "shorting," because
17 the defendants delivered some oil but less
18 than what they were charging the customer
19 for. Thus, the delivery was "short," in
20 that it was not complete. It is estimated
21 that the aggregate theft in the heating oil
22 industry amounted to at least \$18 million
23 annually, with an estimated \$4 million
24 stolen annually from the City. The City
25 paid at least \$117 million for fuel

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1
2 deliveries to City buildings in Fiscal Year
3 2014 alone.

4 This fraud has been going on for a
5 very long time. There have been criminal
6 cases brought in the past, particularly in
7 the 1990s and early 2000s, both state and
8 federal cases. Yet, as evidence by the
9 indictments last November, the fraud
10 continues.

11 Therefore, on the table now for the
12 Commission's consideration is a proposal
13 for the Commission's staff to pursue a
14 legislative solution to this fraud, much
15 like the legislative solution that wrenched
16 control of the commercial garbage hauling
17 industry from the hands of traditional
18 organized crime. The proposal is for the
19 staff to draft legislation and negotiate it
20 through the proper channels with the City
21 Council. Any final draft of legislation
22 would then be brought before the Commission
23 for a vote.

24 Do any of the Commissioners have any
25 questions or comments regarding this

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proposal?

(No response.)

MR. GENEL: Seeing none.

Is there a motion to bring this
proposal up for a vote?

MS. GARCIA: So moved.

MR. GENEL: Is there a second?

MR. DENESOPOLIS: Second.

MR. GENEL: At this time we are
going to vote "Yes" or "No" on this
proposal. A vote of "Yes" authorizes the
staff to draft and negotiate legislation
with the City Council regarding the
regulation of the heating oil delivery
industry.

How do the Commission members vote?

MR. SCHWARTZ: Yes.

MR. DENESOPOLIS: Yes.

MR. BROWNELL: Yes.

MS. GARCIA: Yes.

MS. SENATUS: Yes.

MS. ABELES: Yes.

MR. GENEL: Let the record reflect
that the vote is unanimous in favor of the

1 Proceedings

2 rule.

3 The next and last item on our agenda
4 is the consideration of seven different
5 applications, all of which the Commission's
6 staff has recommended to the Commission be
7 denied. Each applicant was served with a
8 Notice of Grounds to recommend the denial
9 of its application. Each applicant was
10 advised that it had ten business days to
11 submit a sworn written response to the
12 Commission. Last week, all of the
13 Commission members were provided with the
14 recommended denial decisions regarding
15 these applications, as well as any
16 responses submitted by the applicants.
17 There have been no material changes made to
18 any of the recommended denial decisions
19 since then.

20 I will now review with the
21 Commission members the grounds cited for
22 each recommended denial. As we go through
23 each application, the Commission members
24 will vote as to whether or not to adopt the
25 staff's recommendation to deny the

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application. A vote of "Yes" is a vote to adopt the staff's recommendation, and a vote of "No" is to not adopt the recommendation.

The first application to be considered is the license application of Cyclone Recycling Inc. to operate as a trade waste business. The staff attorney in charge of this application is David Mandell. The Commission staff recommends denial of this application based on the following ground, as fully set forth in the staff's recommendation:

That the Commission denied the renewal application of Cyclone's predecessor company, Oil Gorillas, Inc., finding that Oil Gorillas lacked good character, honesty and integrity. Based on the facts of this case, the Commission should also find that Cyclone lacks good character, honesty and integrity as recommended by the staff.

Do any of the Commissioners have any questions or comments regarding this

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1 Proceedings

2 application?

3 (No response.)

4 MR. GENEL: Seeing none.

5 Is there a motion from the
6 Commissioners to adopt the staff's
7 recommendation?

8 MS. GARCIA: So moved.

9 MR. GENEL: Is there a second?

10 MS. SENATUS: Second.

11 MR. GENEL: How do the Commission
12 members vote? Yes or no to adopt?

13 MR. SCHWARTZ: Yes.

14 MR. DENESOPOLIS: Yes.

15 MR. BROWNELL: Yes.

16 MS. GARCIA: Yes.

17 MS. SENATUS: Yes.

18 MS. ABELES: Yes.

19 MR. GENEL: Let the record reflect
20 that the vote is unanimous.

21 The next application to be
22 considered is the registration application
23 of Fitzcon Construction/Ren Corp. to
24 operate as a trade waste business. The
25 staff attorney in charge of this

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application is Jared Rosen. The Commission staff recommends denial of this application based on the following three independently sufficient grounds, as fully set forth in the staff's recommendation:

One, the applicant failed to provide truthful and non-misleading information in connection with the application. Two, an individual named Roman Fitzpatrick is an undisclosed principal of the applicant. And three, the applicant knowingly failed to provide information required by the Commission.

Are there any questions or comments from the Commissioners regarding this application?

(No response.)

MR. GENEL: Seeing none.

Is there a motion from the Commissioners to adopt the staff's recommendation?

MR. SCHWARTZ: So moved.

MR. GENEL: Is there a second?

MS. SENATUS: Second.

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MR. GENEL: How do the Commission members vote?

MS. ABELES: Yes.

MS. SENATUS: Yes.

MS. GARCIA: Yes.

MR. BROWNELL: Yes.

MR. DENESOPOLIS: Yes.

MR. SCHWARTZ: Yes.

MR. GENEL: Let the record reflect that the vote is unanimous.

The next application to be considered is the registration renewal application of Moises Landscaping to operate as a trade waste business. The staff attorney in charge of this application is David Mandell. The Commission staff recommends denial of this application based on the following two independently sufficient grounds, as fully set forth in the staff's recommendation:

One, the applicant lacks good character, honesty and integrity because it failed to pay taxes and other government obligations for which judgements have been

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entered. And two, the applicant knowingly failed to provide information and documentation required by the Commission.

Do any of the Commissioners have any questions or comments regarding this application?

(No response.)

MR. GENEL: Seeing none, is there a motion from the Commissioners to adopt the staff's recommendation?

MS. GARCIA: So moved.

MR. GENEL: Is there a second?

MS. SENATUS: Second.

MR. GENEL: How do the Commission members vote?

MR. SCHWARTZ: Yes.

MR. DENESOPOLIS: Yes.

MR. BROWNELL: Yes.

MS. GARCIA: Yes.

MS. SENATUS: Yes.

MS. ABELES: Yes.

MR. GENEL: Let the record reflect that the vote is unanimous.

The next application to be

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1 Proceedings

2 considered is the registration application
3 of RJB Contracting Corp. to operate as a
4 trade waste business. The staff attorney
5 in charge of this application is
6 Pamela Peralta. The Commission staff
7 recommends denial of this application based
8 on the following three independently
9 sufficient grounds, as fully set forth in
10 the staff's recommendation:

11 One, the applicant knowingly
12 provided false and misleading information
13 to the Commission in connection with the
14 application. Two, the applicant's
15 principal provided false and misleading
16 information during his sworn testimony
17 before the Commission. And three, the
18 applicant and an undisclosed principal
19 failed to pay taxes and other obligations
20 for which judgements have been entered.

21 Do any of the Commissioners have any
22 questions or comments regarding this
23 application?

24 (No response.)

25 MR. GENEL: Seeing none.

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Is there a motion from the
Commissioners to adopt the staff's
recommendation?

MR. DENESOPOLIS: So moved.

MR. GENEL: Is there a second?

MS. SENATUS: Second.

MR. GENEL: How do the members vote?

MS. ABELES: Yes.

MS. SENATUS: Yes.

MS. GARCIA: Yes.

MR. BROWNELL: Yes.

MR. DENESOPOLIS: Yes.

MR. SCHWARTZ: Yes.

MR. GENEL: Let the record reflect
that the vote is unanimous.

The next application to be
considered is the application of
Russell J. Confusione for a photo
identification card to work in the Brooklyn
Meat Market. The staff attorney in charge
of this application is David Mandell. The
Commission staff recommends denial of this
application based on the following ground,
as fully set forth in the staff's

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1 Proceedings

2 recommendation:

3 The applicant was convicted of a
4 crime that bears a relationship to the
5 fitness of such person to work in a public
6 wholesale market.

7 Do any of the Commissioners have any
8 questions or comments regarding this
9 application?

10 (No response.)

11 MR. GENEL: Seeing none.

12 Is there a motion from the
13 Commissioners to adopt the staff's
14 recommendation?

15 MS. SENATUS: So moved.

16 MR. SCHWARTZ: Second.

17 MR. GENEL: How do the members vote?

18 MR. SCHWARTZ: Yes.

19 MR. DENESOPOLIS: Yes.

20 MR. BROWNELL: Yes.

21 MS. GARCIA: Yes.

22 MS. SENATUS: Yes.

23 MS. ABELES: Yes.

24 MR. GENEL: Let the record reflect
25 that the vote is unanimous.

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The next application to be considered is the licensed renewal application of Salikegne Express Inc. to operate as a trade waste business. The staff attorney in charge of this application is David Mandell. The Commission staff recommends denial of this application based on the following four independently sufficient grounds, as fully set forth in the staff's recommendation:

One, the applicant has engaged in significant amounts of recyclable cardboard theft. Two, the applicant has been found in persistent violation of city, state, or federal laws, rules or regulations regarding the handling of trade waste, and has admitted liability for persistently violating Commission rules. Three, the applicant failed to pay taxes, fines, penalties, or fees that are related to the applicant's business and for which judgement has been entered in favor of the Workers' Compensation Board of New York. And four, the applicant knowingly failed to

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provide information and documentation
required by the Commission.

Do any of the Commissioners have any
questions or comments that they would like
to make regarding this application?

(No response.)

MR. GENEL: Seeing none.

Is there a motion from the
Commissioners to adopt the staff's
recommendation?

MR. SCHWARTZ: So moved.

MR. GENEL: Is there a second?

MS. GARCIA: Second.

MR. GENEL: How do the Commission
members vote?

MS. ABELES: Yes.

MS. SENATUS: Yes.

MS. GARCIA: Yes.

MR. BROWNELL: Yes.

MR. DENESOPOLIS: Yes.

MR. SCHWARTZ: Yes.

MR. GENEL: Let the record reflect
that the vote is unanimous.

The next application to be

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considered is the registration application of Verrazano Tree Service Inc. to operate as a trade waste business. The staff attorney in charge of this application is former Executive Agency Counsel Melissa Iachan. The Commission staff recommends denial of this application based on the following three independently sufficient grounds, as fully set forth in the staff's recommendation:

One, the applicant failed to pay taxes and other government obligations for which judgements have been entered. Two, an affiliate of the applicant illegally operated an unpermitted transfer station in violation of federal, state and local laws. And three, the applicant has unlawfully transported trade waste without a license or registration.

Do any of the Commissioners have any questions or comments regarding this application?

(No response.)

MR. GENEL: Seeing none.

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Is there a motion from the
Commissioners to adopt the staff's
recommendation?

MS. GARCIA: So moved.

MR. GENEL: Is there a second?

MR. DENESOPOLIS: Second.

MR. GENEL: How do the Commission
members vote?

MR. SCHWARTZ: Yes.

MR. DENESOPOLIS: Yes.

MR. BROWNELL: Yes.

MS. GARCIA: Yes.

MS. SENATUS: Yes.

MS. ABELES: Yes.

MR. GENEL: Let the record reflect
that the vote is unanimous.

That concludes the matters before
the Commission. I ask the members of the
Commission to sign each denial decision
that has been voted today, which I'll be
passing out in a moment. I thank the
Commission members for their participation,
and I thank the members of the Commission
staff for their work on these matters.

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Thank you also to the members of the public
who are here today. That concludes the
meeting.

(Time noted: 11:01 a.m.)

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