The City of New York
BUSINESS INTEGRITY COMMISSION
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DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE LICENSE RENEWAL APPLICATION OF OIL GORILLAS INC. TO OPERATE AS A TRADE WASTE BUSINESS

I. PRELIMINARY STATEMENT

Oil Gorillas, Inc. ("Oil Gorillas" or the "Applicant") (BIC-4297) has applied to the New York City Business Integrity Commission ("Commission"), formerly known as the New York City Trade Waste Commission, for renewal of a license to operate as a trade waste business. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a).

On February 17, 2015, the staff issued and served the Applicant with Notice of the Grounds to Recommend the Denial of the License Renewal Application of Oil Gorillas ("Notice"). The Applicant was granted ten business days to respond, until March 3, 2015. See 17 Rules of the City of New York ("RCNY") §2-08(a). On March 2, 2015, the Applicant submitted a response, which consisted of an eight (8) page letter (dated February 26, 2015) from principal Yevgeny Komissarov, and 14 appendices which include business records,[1] updated information to the application, and a letter of reference.[2] (collectively, the "Response"). See March 2, 2015 Response. Based upon the record as to the Applicant, the Commission now denies Oil Gorillas' license renewal application because the Applicant lacks good character, honesty and integrity based on the following independently sufficient reasons:

1. **Adam Borisuk is an undisclosed principal of the Applicant.**

2. **The Applicant knowingly failed to maintain and provide information and/or documentation required by the Commission.**

[1] Among the records provided with the Response are credit card statements in the name of "Doron Hay Saar." See Response Appendix 9. The Response notes that although Doron Hay Saar "has absolutely no involvement or ownership in" the Applicant, Dorron Hay Saar is a close friend of Komissarov, who allowed Komissarov to be an "additional card holder." See id. The Commission notes that the Applicant failed to report this information on its application, even though this kind of financial information is required on the application. See Application at 13,15.

[2] The letter of reference does not address or refute any of the facts alleged in the Notice. See Response Appendix 14.

3. **The Applicant provided the Commission with false and misleading information.**

4. **The Applicant has violated Local Law 42 of 1996 by illegally transferring its license to numerous individuals and unlicensed companies.**

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 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, including the construction and demolition debris removal 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). It is this licensing scheme that 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 New York City 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;
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> 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 a license. 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). Admin. Code § 16-116.

III. FACTS

The Applicant applied to the Commission for a trade waste removal license. See License Application filed on January 12, 2012 ("Application"). On February 10, 2012, the Commission granted the Applicant a trade waste license. See Oil Gorillas Licensing Order. The Applicant is in the business of removing and transporting used cooking oil. On February 25, 2014, the Applicant filed a renewal application with the Commission ("Renewal Application"). See Renewal Application. The Applicant disclosed Yevgeny Komissarov ("Komissarov") as its sole principal and 100% owner in the Application and in the Renewal Application. See Application at 20; Renewal Application at 7.

Beginning in October 2014, the Commission requested that the Applicant produce books and records concerning its business that are required to be maintained.[3] Initially,

[3] 17 RCNY Section 5-03 requires licensees to "maintain records concerning its business including but not limited to: bills and purchase invoices (with notations identifying whether the bill or invoice was paid and, if so, the check number and date), deposit slips, copies of checks received from payors, bank statements, cancelled checks, tax returns (copies of Federal, State, and local returns with all supporting schedules), copies of accountants' workpapers, insurance policies, drivers' route trip sheets, collective bargaining agreements, petty cash disbursement records, IRS W-2 forms, IRS W-4 forms, IRS 1099 forms, internal memoranda concerning the licensee's finances or one or more customers or prospective customers of the licensee, contracts, documents concerning route sales and contract assignments, waste surveys, rate schedules, discount rate lists, documents concerning mergers, acquisitions, subcontracts and asset sales, copies of cash receipts, documents reflecting electronic fund transfers, written correspondence, lists of collection routes and schedules, submissions to and notices from the Commission, and all documents supporting, evidencing, or used to create the reports, books, journals, registers, and ledgers that the licensee

Komissarov informed the Commission's staff that he and/or his accountant had the records, and would produce the records for the staff. See October 23, 2014 email from Komissarov to Director of Audit, Sarah Nasir. In his October 23, 2014 email, Komissarov stated that he "was with [his] accountant yesterday and [they] compiled all the tax forms, payroll forms, 1099's... I have prepared everything else that you have requested such as driving records, employee records, vehicle records, lease agreements and route details..." See id. Despite Komissarov's representations that he "prepared everything else that" the Commission's staff requested, he ultimately failed to provide most of the records requested by the Commission's staff.[4]

On October 31, 2014, the Commission's staff followed up by providing the Applicant with a written list of books and records requested. These records included, cash receipts journal, cash disbursements journal, customer subsidiary ledger, route sheets, delivery tickets, accounts receivable aging report, customer paid invoices, accounts payable, detailed payroll journal, employee files, DEC permits 364 and 360, detailed general ledger, year-end adjusting entries, adjusted trial balance, statement of profit and loss, balance sheet, corporate tax returns (including federal, state and city tax returns), New York State sales tax returns, NYS-45 Forms ("quarterly combined withholding, wage reporting and unemployment insurance return"), IRS form 940 ("Employer's annual federal unemployment tax return"), IRS Form 941 ("Employer's Quarterly Federal Tax Return"), IRS Form W-2 ("Wage and Tax Statement"), IRS Form W-3 ("Transmittal of Wage and Tax Statements"), IRS Form 1099 ("Miscellaneous Income"), IRS Form 1096 ("Annual Summary and Transmittal of U.S. Information Returns"), any and all business bank account statements including cancelled checks, deposit slips and copies of checks received, any and all business credit card monthly statements, any and all financing agreements, any and all [vehicle] titles, any and all rental/leasing agreements, and any and all business loan statements. See October 31, 2014 Request for Documents; see also, 17 RCNY §5-03.

Subsequently, the Applicant retained an attorney, who provided the Commission's staff with only a portion of the required records on December 4, 2014. See December 4, 2014 emails from Scott Klein to David Mandell.[5] On December 9, 2014, the Commission's staff reminded the Applicant's attorney that most of the required records where still not produced. See email from David Mandell to Scott Klein. On December 11, 2014, members of the Commission's staff met with the Applicant's attorney (at the Applicant's attorney's request). During the December 11, 2014 meeting,

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is required to maintain pursuant to this section." In addition, 17 RCNY Section 5-03(d) requires licensees to "maintain a complete and accurate set of books of account reflecting the operation of the licensee's business. Such books may be maintained on a computerized accounting system, and shall be kept on either a cash or an accrual basis of accounting in accordance with Generally Accepted Accounting Principles...."

[4] During his December 19, 2014 sworn testimony, Komissarov admitted that the Applicant failed to maintain most, if not all, of the business records that the Applicant is required to maintain. See Yevgeny Komissarov Transcript of Sworn Statement at 155-160.

[5] Attached to six separate emails (sent on December 4, 2014) from the Applicant's attorney to the Commission were: NYS-45 Forms for three quarters of 2012 and for the four quarters of 2013; IRS Form 941 for three quarters of 2012 and for four quarters of 2013; corporate tax returns for 2012 and 2013; New York City Corporate tax return for 2012; and IRS form 940 for 2012 and 2013.

the Applicant's attorney represented that the Applicant did not maintain any other business records. See December 12, 2014 letter from David Mandell to Scott Klein.

The Commission's staff and the Applicant's attorney then agreed to schedule the sworn testimony of Komissarov for December 19, 2014. At 6:12 p.m. on December 18, 2014, the Applicant's attorney provided the Commission's staff with the Applicant's 2013 General Ledger. See December 18, 2014 email from Scott Klein to David Mandell. Despite this last minute submission, the Applicant still failed to provide the Commission with most of the business records that were requested and that the Applicant is required to maintain.

On December 19, 2014, Komissarov appeared at the Commission's offices and provided sworn testimony. See Yevgeny Komissarov Transcript of Sworn Statement ("Komissarov Tr."). Komissarov's own testimony established that Adam Borisuk ("Borisuk") is an undisclosed principal who participated directly and indirectly in the control of the Applicant business. See id. Furthermore, Komisarrov's testimony established that Komissarov himself has little or no control of the Applicant business. See id.

Borisuk Conceptualized the Applicant Business

According to Komissarov, Borisuk essentially controlled and operated Oil Gorillas from the moment it was conceptualized in early 2011. See Komissarov Tr. at 18. Komissarov, who at the time was 18 or 19 years old and was employed as a bagel deliveryman, decided to enter the trade waste industry - specifically the removal and transportation of used cooking oil. See id. at 18. Komissarov testified that his on-line research about the industry led him to Borisuk. See id. at 18. Sometime in 2011, Komissarov then contacted Borisuk by telephone and set up a meeting at a diner. See id. at 18-19. Borisuk directed Komissarov on what needed to be done to start the Applicant business, including acquiring a van and making modifications to the van. Borisuk also taught Komissarov "how to close a deal..." See id. at 19, 22. Borisuk then embarked on his plan to make the Applicant business operational.

Borisuk Provided Employees and Vehicles to the Applicant Business

In April 2011, Borisuk informed Komissarov that Borisuk had employees and trucks to start operations. See id. at 39-40. Borisuk structured the Applicant business so that men whom Borisuk knew provided the titles of their trucks to the Applicant. See id. at 133. The Applicant then registered the trucks with the Department of Motor Vehicles, insured the trucks, and disclosed the trucks to the Commission. See id. at 138-141. These men, some of whom were disclosed to the Commission as employees of the Applicant and some who (by Komissarov's own admission) were never disclosed to the Commission, removed and transported some waste from the Applicant's customers, and removed and transported other waste from their own customers. See id. at 92-93. Although these men operated their trucks under the auspices of the Applicant business, Komissarov admitted that he had no idea about the identity of all of the customers

involved and that he had little or no control over how these men conducted their operations. When asked why he allowed these men to conduct their own waste collection operations, Komissarov again turned to Borisuk: "Because – well, it wasn't my idea. It was like – it was the way Adam [Borisuk] structured it and I was under his guidance from – from April '12 to 2013. That's how we operated."[6] See id. at 93. This admission alone establishes Komissarov's complete lack of control over the operations of the Applicant business and that Borisuk was in control.

Although Komissarov testified that he considered these men to be employees of the Applicant, at least some of these men were actually paid by another company, Clean Air Group, which, according to Komissarov, is owned by Gioacchino Acquista. According to Komissarov, Gioacchino Acquista was also an employee of the Applicant.[7] See id. at 78-79. Again, similar to the other employees, Borisuk introduced Komissarov to Gioacchino Acquista. See id. at 79. Borisuk also provided Komissarov with the titles for several trucks that were owned by Acquista. See id. at 79-80. At Borisuk's direction, Komissarov registered these vehicles in the name "Oil Gorillas" with the Department of Motor Vehicles and disclosed these vehicles to the Commission. See id. at 80. Komissarov summarized the business structure that Borisuk created: "and we worked the same way, pretty much, with all the drivers." See id. at 80. Although Acquista's trucks were registered to and insured by the Applicant, Acquista continued to pay the leases for at least four trucks. See id. at 88-89. When asked why Acquista, who Komissarov identified as an Oil Gorillas employee, pays for the truck leases, Komissarov testified, "that's the way we had it set up."

Q.: Why did you have it set up that way?

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[6] Komissarov testified that for a certain period of time beginning in November 2013, Oil Gorillas did not conduct any business due to the market price of oil. See id. at 34-35. Although he could not state for how long the company did not operate, he did testify that during this period of time, Oil Gorillas' employees "couldn't work" for Oil Gorillas. See id. at 36. Yet he also testified that he was sure Oil Gorillas employees were still involved in oil collection because "it was the only thing they knew." See id. at 36-37. Komissarov elaborated that Oil Gorillas' employees were using Oil Gorillas' trucks to collect oil on their own when Oil Gorillas was not operating. See id. at 37. Although he had no idea where the oil was being collected from, and had no idea of any other details, he did give these employees permission to use Oil Gorillas trucks. See id. at 38. He did not seek to be compensated for allowing these trucks to be used because "they were just using the trucks." See id. at 36-37. In the Response, the Applicant attempted to clarify that Borisuk simply "advised" Komissarov "on how to operate the business," and that Komissarov listened to Borisuk's advice because Komissarov "was so young and lack[ed] the necessary experience." See Response at 2. Although the Applicant concedes that Borisuk "manipulate[d] Komissarov "to further [Borisuk's] own financial benefit," the Applicant also claims that "all the final decisions about the direction" of the Applicant "were [Komissarov's] to make." See id. at 2-3. Yet the Response does not offer any explanation about how or why Borisuk manipulated Komissarov and admits that Borisuk gained financial benefit from the operation of the Applicant business. This only buttresses the proposition that Borisuk was indeed an undisclosed principal of the Applicant. See *infra*.

[7] By letter dated January 25, 2015 and received by the Commission on January 28, 2015, Komissarov informed the Commission that the Applicant "will no longer be doing business or associating with" five individuals, including Gioacchino S. Acquista. See January 25, 2015 letter from Komissarov to the Commission.

A.: That was under Adam [Borisuk]'s- - I was under Adam [Borisuk]'s guidance. And the agreement Adam [Borisuk] had with Gioacchino [Acquista] was that he pays for the lease, he brings him the oil, Adam [Borisuk] is guaranteed all the oil and that's just the way it was structured from day one.

See id. at 89.

Borisuk Provided Office Space, a Bookkeeper and Funding to the Applicant Business

In addition to transferring several trucks owned by Clean Air Group to the Applicant, the Applicant also used Clean Air Group's office. According to Komissarov, all checks from the Applicant's customers were sent to Clean Air Group's office. See id. at 75. When asked why checks from the Applicant's customers would be sent to another company's office, Komissarov admitted that he had "no- no idea." [8] See id. at 76.

Besides conceptualizing the business, directing Komissarov, and providing trucks and workers to the Applicant, Borisuk installed his girlfriend, Laura Balsamo ("Balsamo"), as the Applicant's bookkeeper.[9] See id. at 49. According to Komissarov, since Balsamo worked both from the home she shared with Borisuk and from Borisuk's offices, Borisuk naturally had access to the Applicant's bank records.[10] See id. at 49, 57. Komissarov testified that Borisuk reviewed the Applicant's bank records regularly, and deposited money into the Applicant's bank accounts whenever Borisuk saw fit. See id. at 56-57. Oftentimes, Borisuk made these deposits without even consulting with Komissarov. Besides the deposits that Borisuk made on his own, on five or six other occasions, Komissarov claimed that he asked for and received over $100,000 for the Applicant from Borisuk but never paid the money back. See id. at 50-51, 56. Komissarov claims that in exchange for all of the money and guidance from Borisuk, Komissarov agreed to simply provide Borisuk with all of the oil the Applicant collected. See id. at 53.

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[8] First, Komissarov testified that "it is not going to make any sense if I answer the questions this way." See id. at 75. Then, when given another opportunity to explain this arrangement, he feebly stated, "that's just the way we had it set up." See id. at 76. When asked yet again why the Applicants checks would be sent to another company's office, Komissarov provided additional proof that he has little or no control over the Applicant business when he finally admitted that he had "no-no idea." See id. at 76.

[9] Even the accountant that the Applicant retained, Joel Seidner, is also Borisuk's accountant. See id. at 81.

[10] Q.: Why did you give [Borisuk] access to the bank account?

A.: Because his girlfriend was the—he said oh, Laura Balsamo will do the bookkeeping.

Q.: How does Laura [Balsamo] doing the bookkeeping translate into Adam [Borisuk] having access to the bank account?

A.: Because if they are in the same office and she has the Chase bank account website open, if he's right there he can see it.

See id. at 57.

False and Misleading Information Provided to the Commission

In addition to the Applicant's continued obligation to abide by the Commission's rules, Komissarov certified in both the Application and the Renewal Application that "to the best of [his] knowledge, the information provided in response to each question and in the attachments is full, complete and truthful." See Application at 33; Renewal Application at 12. Yet, in addition to the Applicant's failure to disclose Borisuk as a principal of the Applicant, the Commission's investigation revealed that the Applicant:

- failed to disclose numerous employees to the Commission.[11] See id. at 144-145;
- failed to provide additional disclosure to the Commission for several employees who are in managerial capacities or who perform tasks including but not limited to soliciting business. See id. at 95-99;
- failed to disclose all telephone numbers and email addresses used by the Applicant. See id. at 132, 200-203; 214;
- failed to disclose all addresses used by the Applicant. See id. at 187-188.

In an attempt to distance himself and the Applicant from Borisuk, Komissarov claimed that he "stopped associating" with Borisuk in the end of November 2013.[12] See id. at 65-66. Yet, although he initially testified that he stopped associating with Borisuk in the end of November 2013, Komissarov also testified that he spoke to Borisuk two weeks before his sworn statement, in early December 2014.[13] See id. at 66.

Subsequent to his testimony, Oil Gorillas' made various submissions to the Commission in an attempt to make the Applicant appear to be a legitimate business under Komissarov's operation. Instead, the Applicant created even more questions about its operations. In submissions made to the Commission on January 15, 2015, January 28, 2015,[14] and January 29, 2015, the Applicant: (1) disclosed some employees who were never before disclosed to the Commission; and (2) claimed that it "will no longer be doing business or associating" with nine individuals – some previously disclosed – some never disclosed as employees of the Applicant. See Employee/Agent Disclosure Form for QiQiang Zheng; January 25, 2015 letter from Komissarov to the Commission;

[11] In fact, Komissarov admitted that he never even vetted new employees before hiring them. See id. at 116. Although he claimed to care about whether the applicant's employees have criminal histories, he also admitted that he did nothing to check on their criminal histories due to his own "negligence." See id. at 118.

[12] In the Response, the Applicant weakly attempts to camouflage all of the evidence that established Borisuk's control of the Applicant by claiming that Komissarov eventually "disconnected" himself "completely" from Borisuk. See Response at 3. This attempt, which was unsupported by any evidence besides Komissarov's self serving unsworn statement does not change the fact that Borisuk is or was an undisclosed principal of the Applicant.

[13] In the Response, the Applicant clarifies that "the reason [Komissarov] contacted Adam Borisuk was because as I needed to reach Laura Balsamo (the bookkeeper), I repeatedly got through to her voicemail. Since the calls went to her voicemail, I called Adam Borisuk to reach her." See Response at 4. The Response does not explain why Komissarov tried to reach Balsamo, who he testified was the Applicant's *former* bookkeeper.

[14] The submission that was made on January 28, 2009 was dated January 25, 2015.

January 29, 2015 letter from Komissarov to the Commission. Then, on February 2, 2015, the Applicant returned six sets of trade waste license plates that were previously issued to the Applicant. See Receipt for Returning BIC Trade Waste Conveyance Plates. Thus, the actual identity of all of the Applicant's present employees is unclear. Similarly, it not clear which vehicles the Applicant presently utilizes to remove and transport its customers' waste.[15]

IV. ANALYSIS

1. Adam Borisuk is an undisclosed principal of the Applicant.

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 application filed by the Applicant on January 12, 2012 directs, "On Schedule A, identify all individuals who are principals of applicant business and provide the information requested." See Application at 3. Schedule A of the Application submitted by the Applicant discloses one principal – "Yevgeny Komissarov" See Application at 20. Similarly, Schedule A of the Renewal Application directs the Applicant to "identify all persons who are current principals of the licensee or registrant, including but not limited to directors, officers and stockholders." See Renewal Application at 7. Schedule A of the Renewal Application submitted by the Applicant discloses one principal – "Yevgeny Komissarov" See Renewal Application at 7. Adam Borisuk's name does not appear anywhere in either application submitted by Oil Gorillas. See Application; 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) (italics added).

In the Response, the Applicant disregards Local Law 42's definition of "principal," and simply states that "Borisuk has never held any ownership stake" in the Applicant. See Response at 2. The Applicant claims that all Borisuk ever did for the Applicant was to provide Komissarov "with advice and guidance..." See id. Yet the

[15] In the Response, the Applicant does nothing to shed transparency on the current state of its operations. The Response simply states that Komissarov "dissassociate[d]" himself with nine individuals listed in the submission on January 28, 2015 and January 29, 2015 on advice of counsel. See Response at 7. The Applicant does not state why Komissarov decided to "dissassociate" with these individuals, especially since he did so shortly after he disclosed their existence to the Commission. In addition, the Response does not explain why some of these individuals were not disclosed to the Commission in the first place.

Applicant concedes in its Response, that Borisuk led Komissarov "to do things that purely served [Borisuk's] financial interest." See id.

As discussed above, a review of the entire record establishes that Komissarov has little or no control of the Applicant business and that Borisuk participates directly in the control the Applicant business. By Komissarov's own admission, Borisuk selected the employees, provided the vehicles, contributed to the finances, and determined where to dump the waste. The failure of the Applicant to provide truthful and non-misleading information to the Commission about who is a principal of the company is evidence that the Applicant lacks good character, honesty and integrity. As Borisuk is a person who participated directly or indirectly in the control of the Applicant, he is a principal, and as such was not disclosed to the Commission in any of the applications submitted by the Applicant. Therefore, the Commission denies this application on this independently sufficient ground. See Admin. Code §§16-509(b); 16-509(a)(i).

2. The Applicant 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 requested that the Applicant produce books and records that it is required to maintain. Although Komissarov initially stated that the Applicant maintained and would produce the books and records, ultimately, the Applicant, through its attorney, produced only some of the required books and records.

In the Response, the Applicant offers "apologies" for not promptly providing the Commission with all of the required books and records. See Response at 4. The Applicant blames this tardiness on its "disorganization."[16] See id. Approximately five months after Komissarov represented that the Applicant would provide the Commission with required books and records and approximately two months after Komissarov testified under oath that most of the books and records were not even maintained, the Applicant attached some, but not all, of the required books and records to the Response.[17] See Response at 4. First, the books and records provided along with the Response are still not all of the required books and records. Second, this attempt to provide the Commission with only another portion of the books and records the Applicant is required to maintain is simply too little too late. Notably absent from the Response is any

[16] In the Response, the Applicant also states that the reason for the delay in the submission of whatever books and records it did provide to the Commission was caused by "extreme distress as I tried to implement all of the changes that would bring me to be in full compliance with the rules and regulations set forth by Commission." See Response at 5. Besides admitting that the Applicant is not in compliance with the Commission's rules and regulations, the Applicant does not even attempt to describe the changes it claims to have made.

[17] Attached to the Response were route sheets, delivery tickets, customer paid invoices, DEC Permit 364, IRS Form W-2, IRS Form 1099, IRS Form 1096, Business Bank Account Statements, Business Credit Card Monthly Statements, and Vehicle Titles. See Response at 4; see also Response Appendices 1-10.

explanation about why Komissarov and his attorney previously represented to the Commission that these records were not maintained.

The Commission need not attribute a motive for the Applicant's failure to provide required information and documentation. It is likely, however, that either these books and records: (1) were never maintained; (2) were maintained by Adam Borisuk; and/or (3) reveal information that the Applicant and Borisuk do not want the Commission to see. Notwithstanding the reason for the Applicant's failure to provide required information and documentation, the Commission may refuse to grant a license if an applicant fails to provide information in connection with the application. The Applicant was advised that the failure to provide this information and documentation could be considered as a ground upon which to deny its renewal application. See December 9, 2014 email from David Mandell to Scott Klein. Thus, the failure to provide information and documentation in connection with the license renewal application of Oil Gorillas constitutes an independent basis on which the Commission denies this application.

3. The Applicant 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 Application and Renewal Application that were filed with the Commission.

Komissarov certified that the information contained in the License Application and Renewal Application was complete and truthful. See License Application at 33; Renewal Application at 12. Yet, in addition to Borisuk's name not appearing in both the Application and Renewal Application, Komissarov failed to disclose to the Commission the existence of employees, telephone numbers, addresses, and email addresses, despite being asked to do so in both applications. See *supra* at 6-10.

In the Response, the Applicant argues that it provided the Commission with false and misleading information because Komissarov "never perceived [Borisuk] to be a principal, but rather someone who provided me with guidance and advice." See Response at 6. Yet, as demonstrated above, the facts establish that Borisuk had direct or indirect control of the Applicant business. As such, he is or was a principal of the Applicant business who was never disclosed as such to the Commission. Komissarov's false "perception" of whether Borisuk should or should not have been disclosed to the Commission was incorrect and resulted in the Applicant providing the Commission with false and misleading information.

This failure to provide truthful information demonstrates that the Applicant lacks the requisite good character, honesty and integrity to operate a trade waste business in New York City. For this independently sufficient reason, this renewal application is denied.

4. The Applicant has 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 that the Applicant allowed its Commission-issued license to be transferred to others in violation of Local Law 42 of 1996. The Applicant engaged in a scheme whereby vehicle titles were transferred to the Applicant. The Applicant then registered and insured these vehicles as the Applicant's own. Next, the Applicant 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 the Applicant, in reality, each of these vehicle operators were working for themselves in vehicles with Commission license plates that were issued to the Applicant. Apparently, based on Komissarov's own admission, these vehicle operators worked independent of the Applicant, and the Applicant had little or no control over any of them.

In the Response, the Applicant blames Borisuk for devising this scheme and claims that other companies operate in this manner. See Response at 7. The Response on this point, barely even merits a reply. The Applicant admitted that it violated Local Law 42 by illegally transferring its license to numerous individuals and unlicensed companies. For this independently sufficient ground, this Renewal Application is denied.

V. CONCLUSION

The Commission is vested with broad discretion 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 falls short of that standard. Accordingly, based on the above independently sufficient reasons, the Commission denies Oil Gorillas Inc.'s license renewal application.

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This license denial decision is effective fourteen days from the date hereof. In order that the Applicant's customers may make other carting arrangements without an interruption in service, the Applicant is directed to continue servicing its customers for the next fourteen days in accordance with existing contractual arrangements, unless advised to the contrary by those customers. The Applicant shall not service any customers, or otherwise operate as a trade waste removal business in the City of New York, after the expiration of the fourteen-day period.

Dated: March 6, 2015

THE BUSINESS INTEGRITY COMMISSION

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Commissioner and Chair

Commissioner Kathryn Garcia
Department of Sanitation

Commissioner Mark Peters
Department of Investigation

Senior Director of Policy Shira Gans
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