



**DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE
REGISTRATION APPLICATION OF 3'S PRODUCE CORP. TO OPERATE AS A
WHOLESALE BUSINESS IN A PUBLIC WHOLESALE MARKET**

Introduction

3's Produce Corp. ("3's Produce" or the "Applicant") has applied to the New York City Business Integrity Commission (the "Commission") for a registration to operate a wholesale business located or operating within a public wholesale market pursuant to New York City Administrative Code ("Admin. Code") §22-253 ("Registration").

On December 17, 2012, the Commission served 3's Produce with "Notice to the Applicant of Grounds to Recommend the Denial of the Registration Application of 3'S Produce Corp. to Operate as a Wholesale Business in a Public Wholesale Market" ("Notice"). The Notice stated the grounds for denial of the application and notified 3's Produce of its opportunity to submit a written response to the Notice and/or to provide other information it would have the Commission consider in connection with its exemption application. The Notice further stated that any factual assertions in 3's Produce's response were to be made under oath. Response was due within ten (10) business days from the date of the notice. On January 2, 2013, the Commission received 3's Produce's response which consisted of an affidavit signed by Dea Soo Yu, the sole principal, and two exhibits (collectively, "Response"). A copy of the Response was provided to members of the Commission for their review.

Based upon the record, the Commission denies 3's Produce's Registration Application because 3's Produce lacks good character, honesty and integrity for the following independent reasons:

- A. Dae Soo Yu, the sole principal of 3's Produce, was convicted of a racketeering activity directly related to the operation of a produce business.**
- B. Dae Soo Yu, the sole principal of 3's Produce, made material false and misleading statements to the Commission in connection with his Application.**
- C. Dae Soo Yu, the sole principal of 3's Produce, failed to provide the information and/or documentation required by the Commission.**

Statement of Facts

3's Produce is located at 420 Hunts Point Ave, Bronx, NY, in the area adjacent to the New York City Terminal Produce Cooperative Market ("Adjacent Area"). Pursuant to 17 RCNY §11-02, this area is subject to the Commission's jurisdiction as it is included within the definition of a public wholesale market. Accordingly, on or about November 11, 2009, 3's Produce applied to the Commission for a Registration to be a wholesaler in a public wholesale

market ("Registration"). Dae Soo Yu ("Yu") is 3's Produce's sole principal. The Commission's investigation into 3's Produce's application has revealed that Yu was recently convicted of a felony charge relating to his business dealings within the very market where he sought a Registration and which he failed to disclose in his application.

Criminal records show that on or about February 20, 2006, following an investigation by New York City Police Department ("NYPD") and the Bronx County District Attorney's Office ("BxDA"), Yu was arrested and charged with committing Grand Larceny in the second degree in violation of Penal Law ("PL") §155.40(1), a class "C" felony, and Grand Larceny in the third degree in violation of PL §155.35, a class "D" felony. In sum and substance, the felony complaint states that Yu was employed as a sales manager at Gorum Corporation DBA Jay Global Enterprises ("Jay Global").¹ When Jay Global noticed that many of Yu's accounts were not paying their invoices, Jay Global questioned Yu, who provided various excuses including, "I haven't received any money from that account; the person who handles that account is out of the country right now; the account is going through some financial trouble and will pay as soon as possible." See Felony Complaint. Jay Global then contacted Yu's accounts directly, who claimed to have paid the balances due. After Jay Global audited Yu's accounts, Jay Global found that Yu had embezzled at least \$128,000. The felony complaint charges that, between October 5, 2005 and January 26, 2006, Yu embezzled this money from Jay Global.

On March 17, 2006, the Bronx County Grand Jury returned a True Bill of Indictment against Yu for Grand Larceny in the second degree in violation of PL §155.40(1), a class "C" felony, and Criminal Possession of Stolen Property in the second degree in violation of PL §165.52, a class "C" felony. On June 6, 2008, Yu admitted the allegations and pleaded guilty to the felony crime of Criminal Possession of Stolen Property in the fourth degree, in violation of PL §165.45(1), a class "E" felony. Yu was sentenced to a five year period of supervision by the New York State Department of Probation, and was required to pay Jay Global \$128,000.00 in restitution. At the time of the plea in 2008, Yu had paid \$103,000.00 of such debt. The remaining \$25,000 was filed as a judgment by order of the Bronx Supreme Court. See Letter from Bronx County District Attorney to Jay Global, dated June 20, 2008.

Yu failed to disclose this 2006 felony conviction to the Commission. Specifically, when asked in the application whether "the applicant business, any of its parents, subsidiaries, affiliates, current principals, or past principals (who were principals of the applicant business within the last three years) [have] been convicted of any misdemeanor or felony in any jurisdiction?" Yu indicated that his answer to this question was "no". See Application at 10 (Question 27). Likewise, Yu answered "no" in response to Question 30a of the Application which asked:

"During the past ten (10) years, has the applicant business, any of its parents, subsidiaries, affiliates, current principals, or past principals (who were principals of the applicant business within the last three years) in any jurisdiction:

¹ Jay Global is a duly registered produce wholesale company which also operates in the Adjacent Area.

- a. been the subject, party, or target of any criminal or civil investigation by a prosecutorial agency, governmental agency, court, committee, grand jury or investigative body (municipal, state, county, provincial, federal, etc.)?”

Id. at 12.

Nor did Yu disclose his felony conviction in response to question 19 of the Principal Disclosure, which asks, “Have you ever been convicted of any misdemeanor or felony in any jurisdiction?” Rather, Yu simply stated, “long time ago I don’t have any information. (drunken Drive)” [sic]. Finally, Yu responded “no” to question 22a of the Principal Disclosure which asks the following:

“During the past five (5) years, have you ever been:

- a. been the subject, party, or target of any criminal or civil investigation by a federal, state or local prosecutorial agency, investigative agency, regulatory agency, or committee?”

In addition to his failure to disclose his 2006 felony conviction (as required by the Commission), Yu also failed to provide additional required information to the Commission. The Principal Disclosure requires disclosure of “each creditor to whom either you or your spouse are indebted, including but not limited to loans, lines of credit, mortgages on real property, co-op loans, secured and unsecured debts or obligations made, guaranteed or co-signed by either you or your spouse, in an amount of \$5,000 or more.” See Principal Disclosure Form at 14 (Question 32). Yu responded, “N/A.” However, the Commission investigation confirmed that, at the time he completed the application; Yu had yet to satisfy the judgment issued by the Supreme Court, and owed Jay Global additional restitution payments.

Finally, in response to Question 15 of the Principal Disclosure related to prior employment, Yu failed to provide the “Name of Supervisor” and “Reason for Leaving,” as required.

Basis for Denial

For the reasons set forth below, the Commission now denies 3’s Produce’s Wholesale Registration Application:

- A. Dae Soo Yu, the sole principal of 3’s Produce, was convicted of a racketeering activity directly related to the operation of a produce business and is therefore unfit to operate a business in the market.**

In determining whether an applicant lacks good character, honesty and integrity, the Commission is explicitly authorized to consider the “commission of a racketeering offense.” See

Admin. Code §22-259(b)(iv). As set forth above, Yu was convicted of Criminal Possession of Stolen Property in the fourth degree in violation of PL §165.45(1), a class “E” felony. In his Response, Yu does not dispute that he was convicted, nor does he dispute that he stole funds from his previous employer. In fact, he explicitly admits that he took money from his employer’s accounts receivables. See Response at ¶ 8. Yu erroneously asserts that the crime he was convicted of is not a Racketeering offense. See Response at ¶ 4. Yu is incorrect. The crime to which Yu pleaded is a “racketeering offense” as a matter of law, as it is an offense enumerated in the New York State’s Enterprise Corruption Statute, PL §460.10(1). “Commission of a racketeering activity,” such as the crime for which Yu was convicted, is an independent basis for denial. See Admin. Code § 22-259(b)(iv).

Moreover, reviewing Yu’s felony conviction in light of the factors set forth in §753(1) of the New York State Corrections Law (“Corr. L.”), further justifies denial of his application for a registration. Those factors are:

- (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person.
- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
- (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (e) The age of the person at the time of occurrence of the criminal offense or offenses.
- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

See Corr. L. § 753(1).

The Commission’s mission is to eliminate organized corruption and criminality, including organized crime, from the industries it regulates. BIC’s goals are to ensure that wholesale market businesses are able to compete fairly, and that such markets remain free from violence, fraud, rackets, and threats. The Commission’s regulatory scheme is designed to ensure that the businesses which are allowed to operate in these industries always conduct their affairs

with honesty and integrity. Here, Yu's felony conviction is clearly related to the duties and responsibilities associated with the registration he now seeks. Yu was arrested, indicted and pleaded guilty to embezzling at least \$128,000 from his former employer, a wholesale produce business operating in the same public market for which he now seeks Registration. See Corr. L. §753(1)(b). As a market business owner, Yu would be responsible for the business's accounts payable, receivable, and its finances in general. Yu has already been convicted of embezzling money from a market business; a conviction that demonstrates that Yu is capable of criminal behavior in this arena. Yu was a mature age at the time he orchestrated this scheme, and the 2006 conviction is relatively recent. Yu should have known what the law required, how to obey it, and to recognize that stealing was illegal and wrong. Notwithstanding, Yu made a conscious choice to steal, putting his pecuniary interest before the interests of his employer and his customer accounts. See Corr. L. §753(1)(e) and (f).

In his Response, Yu acknowledges that he stole money from his former employer's accounts receivables, and that he pleaded guilty to Criminal Possession of Stolen Property in the fourth degree. Remarkably, Yu attempts to justify this unlawful behavior by claiming that his former boss had failed to adequately remunerate him for his hard work, and he was thus was "owed" the money he stole. See Response at ¶¶ 6-8. This proffered explanation, demonstrates Yu's lack of remorse, and speaks far louder than his self-serving, conclusory statement that he "deeply regrets" his crime. Yu also attempts to dissuade the Commission from denying his registration application by claiming that such denial will be prejudicial to his creditors, since they will "suffer losses." Such losses will apparently result from Yu's anticipated failure to pay his debts if his market business is closed. See Response at ¶ 20. Yu's argument that he intends to default on his loans to his suppliers (notwithstanding his contractual obligations or his obligations under the Perishable Agricultural Commodities Act ("PACA")), does nothing to alter the Commission's conclusion that he lacks the requisite good character to operate a market business.

Overall, Yu's response does not change the fact that he pleaded guilty to stealing significant sum of money from a business operating in the same market in which he seeks registration. By his conduct, Yu has shown that he is capable of theft and deception, qualities which are repugnant to the responsibilities of holding a registration, and to the good order of the public markets. As the Commission has a legitimate interest in protecting property, safety and welfare of other wholesale businesses and customers who utilize the public market, the Commission finds that Yu would be unable to meet the responsibilities and requirements of holding a Registration. Accordingly, Commission denies the Applicant's registration application on this independent ground. Admin. Code §22-259(b)(iii).

B. Dae Soo Yu, the sole principal of 3's Produce's, made material false and misleading statements to the Commission in connection with his Application.

As described above, the Commission's investigation uncovered that Yu provided false and misleading statements in his Application and Principal Disclosure. Specifically, false and misleading answers were provided to direct questions about Yu's criminal history and questions about whether he had ever been investigated for committing a crime. See supra at 2-3. In a vain attempt to overcome the significant omissions and misstatements in his application materials, Yu now blames such misstatements on his assistant's erroneous Korean-to-English translation. See Response at ¶¶ 12-13. Between the fact that Yu (who seeks to continue to operate a 6 million dollar business) has an affirmative duty to ensure that his responses to the Commission are fully truthful and accurate, and the fact that the only confusion about the Commission application occurred in relation to those questions related to criminal convictions, prior employers and outstanding debts, the Commission finds that Yu's convenient explanation is not credible. Rather, it appears that Yu falsely answered these questions in an attempt to conceal the fact that he had been convicted of a felony crime for conduct which occurred in the public market. Additionally, Yu failed to answer or provided false and misleading answers to questions which would have revealed his felony conviction, including the disclosure of prior supervisors, reasons for leaving previous jobs and outstanding debts². Id. at 3. Accordingly, the Commission finds that Yu lacks good character, honesty and integrity, and the Commission denies 3's Produce's Registration based upon this independently sufficient ground. Admin. Code §22-259(1).

C. Dae Soo Yu, the sole principal of 3's Produce's, failed to provide the information and/or documentation required by the Commission.

As described above, the Commission's investigation uncovered that Yu provided false and misleading statements in his Application and in his Principal Disclosure. As such, Yu knowingly failed to provide the "Commission information and/or documentation required to obtain a registration." Admin. Code §22-259(d). Accordingly, the Commission denies 3's Produce's Registration application based upon this independently sufficient ground. Id.

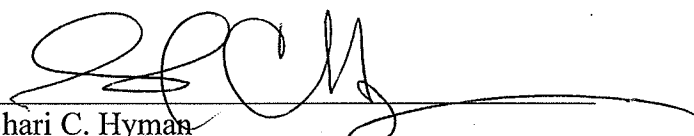
² With respect to the pending \$25,000 money judgment issued against Yu by order of the Bronx Supreme Court, Yu provides a convoluted explanation, essentially claiming that he was unaware that such judgment was pending because he believed that his former attorney entered into a "verbal agreement" with the victim of his crime, which resulted in his restitution obligation being satisfied, but that the victim later reneged on such verbal agreement. See Response at ¶ 11. The Commission does not find such strained explanation credible, particularly given that Yu was present in the courtroom when the Court issued the judgment order. Moreover, even if Yu's explanation, that he had a side agreement with the victim, was credible (which it is not), such agreement would not alter the order of the Court and the fact that Yu was obligated to pay the money judgment.

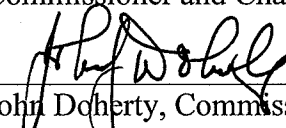
Conclusion

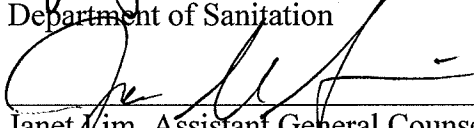
Based on each of the independently sufficient reasons stated above, the Commission finds that 3's Produce and Dae Soo Yu lack good character, honesty and integrity and denies the application of 3'S Produce for a registration as a wholesale business in the adjacent area to at the New York City Terminal Produce Cooperative Market.

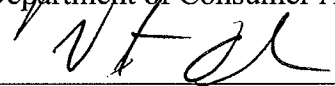
Dated: January 14, 2013


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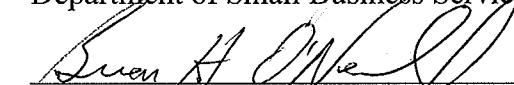

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