



**The City of New York**  
**BUSINESS INTEGRITY COMMISSION**  
100 Church Street · 20th Floor  
New York · New York 10007

**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING  
THE REGISTRATION RENEWAL APPLICATION OF EMERALD CARTING  
SERVICES CORP. TO OPERATE AS A TRADE WASTE BUSINESS**

***Introduction***

On or about September 27, 2019, Emerald Carting Services Corp. (the “Applicant”) (BIC #493223) applied to the New York City Business Integrity Commission (the “Commission”) to renew an exemption from the licensing requirements and a registration to operate a trade waste business “solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation” (the “Emerald Renewal Application”).<sup>1</sup> Local Law 42 of 1996 authorizes the Commission to review and make determinations on such exemption applications. *See* Title 16-A, New York City Administrative Code (“Administrative Code” or “Admin. Code”) § 16-505(a).

After a review of a trade waste registration renewal application, if the Commission grants the renewal of the exemption from the Commission’s trade waste licensing requirements, the applicant will be issued a registration renewal. *See id.* at § 16-505(a)-(b). The Commission’s review of an initial exemption application or an application to renew such an exemption focuses on determining whether the applicant possesses business integrity, *i.e.*, good character, honesty and integrity. *See* Title 17, Rules of the City of New York (“RCNY”) § 1-09 (prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); Admin. Code § 16-504(a) (empowering the Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); Admin. Code § 16-509(a) (authorizing the Commission to refuse to issue licenses or registrations to applicants lacking “good character, honesty and integrity”).

On November 12, 2020, the Commission’s staff issued and served on the Applicant an 11-page Notice to the Applicant of the Grounds to Deny the Registration Renewal Application of Emerald Carting Services Corp. to Operate as a Trade Waste Business (the “Notice”). The Applicant was given 10 business days to respond. *See* 17 RCNY § 2-08(a). Before the deadline, the Applicant’s attorney requested an extension of time to respond. *See* email from Peter Sullivan to the Commission’s staff. The Commission’s staff granted the extension, to December 14, 2020. *See* email from the Commission’s staff to Peter Sullivan. On December 14, 2020, the Applicant submitted a response, consisting of a two-page letter from its attorney. *See* Applicant’s response,

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<sup>1</sup> “Trade waste” or “waste” is defined at Admin. Code § 16-501(f)(1) and includes “construction and demolition debris.”

dated December 11, 2020 (the “Applicant’s Response”). Notably, the Applicant’s Response contained no affidavit or other factual assertion under oath by anyone on behalf of the Applicant.

The Commission has completed its review of the Emerald Renewal Application, having carefully considered both the Notice and the Applicant’s Response. Based on the record herein, the Commission denies the Emerald Renewal Application because the Applicant lacks good character, honesty, and integrity based on the following three independently sufficient grounds:<sup>2</sup>

- 1. The Commission Previously Found that the Applicant’s Alter-Ego Company – Rose Demolition and Carting Inc. – Lacked Good Character, Honesty, and Integrity, and Denied Its Renewal Application;**
- 2. The Applicant Failed to Provide Truthful Information to the Commission; and**
- 3. The Applicant Has Failed to Demonstrate Eligibility for a Trade Waste License.**

### ***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, known as trade waste. 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. Int’l Brotherhood of Teamsters (Adelstein)*, 998 F.2d 120 (2d Cir. 1993); *People v. Ass’n of Trade Waste Removers of Greater New York Inc.*, Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); *United States v. Mario Gigante*, No. 96 Cr. 466 (S.D.N.Y.); *People v. Ass’n of Trade Waste Removers of Greater New York*, 701 N.Y.S.2d 12 (1st Dep’t 1999). The construction and demolition debris removal sector of the City’s carting industry specifically has also been the subject of significant successful racketeering prosecutions. *See United States v. Paccione*, 949 F.2d 1183, 1186-88 (2d Cir. 1991), *cert. denied*, 505 U.S. 1220 (1992); *United States v. Cafra*, No. 94 Cr. 380 (S.D.N.Y.); *United States v. Barbieri*, No. 94 Cr. 518 (S.D.N.Y.).

The Commission is charged with, among other things, combating the 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). This regulatory framework continues to be the primary means of ensuring that an industry once overrun by 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.

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<sup>2</sup> In the Applicant’s Response, the Applicant claims that the recommendation was not based on three independently sufficient grounds. Instead, the Applicant argues that “the recommendation is based upon a single asserted finding that Timothy Doheny is a principal of Emerald.” *See Applicant’s Response* at 1. As demonstrated below, that contention is unfounded.

Pursuant to Local Law 42, a company “solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation,” also known as construction and demolition debris, must apply to the Commission for an exemption from the licensing requirement. *Id.* If, upon review of an application, the Commission grants an exemption from the licensing requirement, it issues the applicant a Class 2 registration. *Id.* at § 16-505(a)-(b). Before issuing a registration, the Commission must evaluate the “good character, honesty and integrity of the applicant.” *Id.* at § 16-508(b); *see also id.* at § 16-504(a). An “applicant” for a license or registration means both the business entity and each principal of the business. *Id.* at § 16-501(a).

The Administrative Code provides an illustrative list of relevant factors for the Commission to consider in determining whether to grant an application for a license or registration:

1. failure by such applicant to provide truthful information in connection with the application;
2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;
3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;
4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;
5. commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. § 1961 *et seq.*) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;
6. association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;
7. having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this

chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;

8. current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;

9. the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;

10. failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction; and

11. failure to comply with any city, state or federal law, rule or regulation relating to traffic safety or the collection, removal, transportation or disposal of trade waste in a safe manner.

*Id.* at § 16-509(a)(i)-(xi). *See also id.* at § 16-504(a).

The Commission also 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 § 16-509(b). *See also* Admin. Code § 16-509(a)(i) (failure to provide truthful information in connection with application as a consideration for denial); *Elite Demolition Contracting Corp. v. The City of New York*, 4 N.Y.S.3d 196, 125 A.D.3d 576 (1st Dep’t 2015); *Breeze Carting Corp. v. The City of New York*, 52 A.D.3d 424 (1st Dep’t 2008); *Attonito v. Maldonado*, 3 A.D.3d 415 (1st Dep’t) (Commission may deny an application for an exemption “where the applicant fails to provide the necessary information, or knowingly provides false information”), *leave denied*, 2 N.Y.3d 705 (N.Y. 2004). In addition, the Commission may refuse to issue a license or registration to an applicant that “has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license.” Admin. Code § 16-509(c); *see also id.* at § 16-504(a). Finally, the Commission may refuse to issue a license or registration to any applicant when the applicant or its principals have previously had a license or registration revoked. *Id.* at § 16-509(d); *see also id.* at § 16-504(a).

An applicant for a private carting license (including a registration for hauling construction and demolition debris) 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 Indus., 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).

## *Statement of Facts*

On or about June 14, 2017, the Applicant applied to the Commission for a registration to remove trade waste for the first time. *See* Emerald Carting Services Corp. Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris (the “Emerald Registration Application”). On the Emerald Registration Application, the Applicant disclosed, among other things, that Walton Budde (“Budde”) was its sole principal. *See* Emerald Registration Application at 3, 13. Budde certified that all of the information contained in the Emerald Registration Application was “full, complete and truthful.” *Id.* at 20.

On September 25, 2017, the Commission granted the Emerald Registration Application and issued a registration to the Applicant, effective October 1, 2017 and valid for two years. *See* Emerald Carting Service Corp. Registration Order. On or about September 27, 2019, the Applicant applied to renew its trade waste registration. *See* Emerald Renewal Application. As with the initial application, the Applicant disclosed Budde as the company’s only principal. *Id.* at 8. As he did with respect to the first application, Budde certified that all of the information contained in the Emerald Renewal Application was “full, complete and truthful.” *Id.* at 13.

The Commission’s investigation of the Emerald Renewal Application has revealed that the Applicant failed to disclose the true nature of its relationship with Rose Demolition and Carting Inc. (“Rose Demolition”). In March 2017, the Commission denied Rose Demolition’s registration renewal application, finding that it lacked good character, honesty and integrity. *See* Decision of the Business Integrity Commission Denying the Registration Renewal Application of Rose Demolition and Carting Inc. to Operate as a Trade Waste Business (“Rose Demolition Denial Decision”), dated March 31, 2017. As demonstrated below, the Applicant was formed in the wake of the Rose Demolition denial, as a continuation of that company.

### *Rose Demolition’s Applications to the Commission*

Rose Demolition first applied to the Commission for a registration in September 1996. *See* Rose Demolition Denial Decision. In August 2002, the Commission approved that application, granting a registration. *See id.* From 2004 to 2014, Rose Demolition applied to renew its registration approximately every two years, and the Commission granted those applications. *See id.*

Beginning in 2004 through its last renewal application, Rose Demolition disclosed Timothy Doheny (“Doheny”) as one of its principals. *See* July 29, 2004 Rose Demolition Renewal Application for a License or Registration as a Trade Waste Business at 5; July 6, 2006 Rose Demolition Renewal Application for License or Registration as a Trade Waste Business at 6; June 26, 2008 Rose Demolition Renewal Application for License or Registration as a Trade Waste Business at 5; July 21, 2010 Rose Demolition Renewal Application for License or Registration as a Trade Waste Business at 7; June 21, 2012 Rose Demolition Renewal Application for License or Registration as a Trade Waste Business at 7; August 12, 2014 Rose Demolition Renewal Application for License or Registration as a Trade Waste Business (“2014 Rose Demolition Renewal Application”) at 7; October 26, 2016 Rose Demolition Renewal Application for License or Registration as a Trade Waste Business (“2016 Rose Demolition Renewal Application”) at 8.

### *The Commission's Denial of Rose Demolition's Renewal Application*

On or about June 3, 2013, while Rose Demolition was registered with the Commission, the company was charged in New York State Supreme Court, New York County, with the crime of offering a false instrument for filing in the first degree, a class E felony. *See* Superior Court Information, *People of the State of New York v. Rose Demolition & Carting, Inc.* According to the Superior Court Information in the matter, on or about April 15, 2011, Rose Demolition, “knowing that a written instrument[] contained a false statement and false information, and with intent to defraud the state ... offered and presented it to a public office, ... with the knowledge and belief that it would be filed with, registered and recorded in and otherwise become part of the records of such public office ...” *Id.* Rose Demolition maintained “unreported cash payrolls and falsified tax returns ... for the years 2007-2011 ...” *See* Plea Agreement between the New York County District Attorney's Office and Timothy Doheny, James Baker and Rose Demolition & Carting, Inc., dated May 23, 2013 (the “May 2013 Plea Agreement”).<sup>3</sup> As a result, Rose Demolition underpaid the State and City of New York on \$276,000 of income. *See* Felony Complaint, *People of the State of New York v. Rose Demolition & Carting, Inc.*

On June 18, 2013, Rose Demolition pled guilty to the charge. *See* Certificate of Disposition. The company was sentenced to a conditional discharge and required to pay \$443,927 in back taxes, penalties and interest and to forfeit \$200,000 to the New York County District Attorney's Office. *See* May 2013 Plea Agreement. Rose Demolition never disclosed this conviction to the Commission, as the Commission's rules require.

Additionally, the company failed to disclose in multiple filings with the Commission that Rose Demolition principal Doheny had a criminal conviction in a previous case. *See* Rose Demolition Registration Renewal Applications for the years 2004, 2006, 2008, 2010, 2012, 2014 and 2016. In 1997, Doheny was charged in Massachusetts with several felonies, including three counts of organizing or promoting gambling and three counts of conspiracy to organize and promote gambling in connection with an organized crime-related illegal gambling ring. *See* Middlesex Superior Court Case Summary/Criminal Docket. On or about November 21, 1997, Doheny pled guilty to two counts of organizing or promoting gambling facilities or services, both felonies. He was sentenced to a suspended sentence of 18 months in prison, two years' probation, and a \$5,000 fine.<sup>4</sup> *See id.*

In June 2016, in connection with Rose Demolition's 2014 renewal application, the Commission's staff interviewed Doheny under oath. *See* transcript of sworn interview of Timothy Doheny (“Doheny Tr.”). During that testimony, Doheny affirmed that he had reviewed the 2014 Rose Demolition Renewal Application and that all of the answers provided in that application were truthful. *See id.* at 11-12; *see also* 2014 Rose Demolition Renewal Application at 12 (certification signed by Doheny). However, in that application, Rose Demolition falsely answered “No,” to the question as to whether it had been convicted of a crime. *See id.* at 3. When asked about that answer,

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<sup>3</sup> The District Attorney's Office agreed not to pursue criminal charges as to Doheny and another individual for this conduct should Rose Demolition fully comply with the May 2013 Plea Agreement. *See* May 2013 Plea Agreement.

<sup>4</sup> Newspapers reported that members of the Boston College football team and an individual with links to organized crime were involved in the criminal scheme. *See* Jon Marcus, *Prosecutor: BC Gambling Money Went to Organized Crime*, ASSOCIATED PRESS NEWS ARCHIVE, January 17, 1997; Peter Donahue, Luke Cyphers, *Gambling Ring Collar Queens Man Tied to BC Betting*, NEW YORK DAILY NEWS, January 18, 1997; *Organized Crime Tied to Betting Scandal*, NEW YORK TIMES, January 18, 1997; *Six Are Indicted for Gambling*, PHILLY.COM, July 16, 1997.

Doheny first maintained that the response was accurate. *See* Doheny Tr. at 12. After further questioning, he claimed that he had misunderstood the question:

If the question is, Have the applicant's principals, employees or affiliates been arrested, convicted, or been the subject of a criminal charge, the answer is no. But Rose Demolition has been convicted of a criminal charge. That I know. But that's not the way I read this. I read this as the principals or employees been convicted.

*Id.* at 12-14. Doheny also admitted that Rose Demolition violated the Commission's rules by failing to notify the Commission of the criminal charges and conviction of Rose Demolition.<sup>5</sup> *See* Doheny Tr. at 22; 17 RCNY § 2-05(b)(iii). Yet, in the above answer, he expressly denied that any of Rose Demolition's principals, employees or affiliates had ever been arrested, convicted or been the subject of a criminal charge. Doheny Tr. at 13. Such a claim was plainly incredible given Doheny's own conviction in 1997.

On March 31, 2017, the Commission unanimously voted to deny Rose Demolition's 2016 Registration Renewal Application. *See* Rose Demolition Denial Decision. In April 2017, Rose Demolition filed an Article 78 petition challenging the Commission's denial decision. *See* *Rose Demolition & Carting Inc. v. City of New York, et. al.*, Index #100409/17 (Sup. Ct. N.Y. Cty April 5, 2017). In March 2018, the Court denied the petition and dismissed the proceeding. *See id.* Rose Demolition did not appeal the Court's decision.

#### *The Applicant Is Formed in the Wake of Rose Demolition's Denial*

On or about May 9, 2017, while Rose Demolition's Article 78 petition was pending, the Applicant incorporated in the State of New York. *See* New York State Department of State, Division of Corporations, Entity Information Printout. Less than one month later, on June 7, 2017, the Applicant filed the Emerald Registration Application, disclosing Budde as its only principal. *See* Emerald Registration Application at 13. The Applicant also disclosed that its office address was the same as Budde's home address: 15 South Greenbush Road, Orangeburg, New York.<sup>6</sup> *See* Emerald Registration Application at 1, 13.

On August 29, 2017, the Commission granted the Emerald Registration Application. *See* Emerald Carting Services Corp. Registration Order. On September 25, 2017, the Applicant signed the registration order, thereby agreeing to all of the conditions of its registration. *See id.* at 6. The

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<sup>5</sup> In committing the crime of which it was convicted, Rose Demolition also violated the terms of its Registration Order. Among other things, in the Registration Order, Rose Demolition agreed that it would (a) "not violate any law of the United States of America or the State of New York"; (b) "timely file all tax returns and timely pay all taxes due and owing in any jurisdiction"; (c) "timely notify the Commission of any material changes in the information set forth in its Application or any other submitted materials"; and (d) "disclose to the Commission any violation of law known to Rose Demolition and relating to the trade waste removal business in New York City." *See* Registration Order issued to Rose Demolition.

<sup>6</sup> The Applicant subsequently informed its insurance carrier that it parks its vehicles at that address, while it informed the Commission that it utilizes 95 Bruckner Boulevard, Bronx, New York to park its trucks. *See* New York State Insurance Identification Cards; *see also* Emerald Renewal Application at 2. Beginning with its 2006 registration renewal application, Rose Demolition disclosed that its office, mailing, and garage address was "95 Bruckner Boulevard, Bronx, New York, 10454." *See* July 6, 2006 Rose Demolition Renewal Application for License or Registration as a Trade Waste Business at 1.

effective date of the registration was October 1, 2017, and its term was two years. *See id.* On September 27, 2019, the Applicant timely filed the Emerald Renewal Application. *See* Emerald Renewal Application. Again, Budde was the only principal disclosed on the Emerald Renewal Application. *See id.* at 8. Doheny was not disclosed on the Emerald Renewal Application in any capacity.

#### *The Applicant's Connections to Rose Demolition*

There are significant connections that bind the Applicant and Rose Demolition to each other. Perhaps most importantly, Doheny was a principal of Rose Demolition and is now an undisclosed principal of the Applicant. And, shortly after the Applicant was formed, Rose Demolition began to transfer substantial funds into the Applicant's bank account. Additionally, the two companies have personnel, vehicles, and property in common, and have even used the same bank branches and payroll company.

#### *Timothy Doheny's Role at the Applicant*

Although the Applicant did not disclose Doheny as having any role at the Applicant business, it is clear that he participates in the control of the company. According to the owner of Tribute Payroll, which both the Applicant and Rose Demolition used for their payroll services, "Walton Budde and Tim[othy] Doheny both have full authority to act on behalf of Rose or [the Applicant]..." *See* email from Jackson Platt, Managing Member/Owner of Tribute Payroll, to the Commission, dated September 21, 2018. Clearly, Doheny has substantial control over the Applicant's business.

In addition, Doheny is the managing member of the entity that owns the property that the Applicant uses as its garage. In the Emerald Renewal Application, the Applicant disclosed that, in December 2018, it changed its garage address to "95 Bruckner Blvd, Bronx, New York, 10454." *See* Emerald Renewal Application at 2. Rose Demolition had previously disclosed this address as its business, garage, and mailing address. *See* July 5, 2006 Rose Demolition Registration Renewal Application at 1. This address is owned by 95 Bruckner Realty LLC, of which Doheny is the managing member. *See* May 16, 2018 Absolute Assignment of Leases and Rents.

#### *Rose Demolition Transferred Funds into the Applicant's Bank Account*

While it held a Commission-issued registration, Rose Demolition had a bank account with Country Bank, located at 4349 Katonah Avenue, Bronx, New York, 10470. *See* Country Bank Check No. 6214, submitted with the Rose Demolition Renewal Application. On September 11, 2017 (approximately two weeks after the Commission granted the Emerald Registration Application), the Applicant opened an account at Country Bank at the same branch that Rose Demolition used. *See* September 11, 2017 Country Bank Site Inspection Form. On September 19, 2017, the Applicant deposited a \$20,000 check from Rose Demolition into that bank account. *See* Check Number 6734 from Rose Demolition's Country Bank Account. This was the first of several transfers of funds from Rose Demolition to the Applicant. From September 2017 to May 2018, Rose Demolition transferred a total of \$222,500 into the Applicant's Country Bank account. *See* Country Bank records.



### *Employees and Vehicles in Common*

The Applicant and Rose Demolition have shared numerous employees and trade waste hauling vehicles. Budde – the Applicant’s sole disclosed principal – was also one of Rose Demolition’s employees. *See* 2016 Rose Demolition Renewal Application at 12-14. In the Emerald Renewal Application, the Applicant disclosed a total of nine employees to the Commission. *See* Emerald Renewal Application at 11. Six of the nine had been previously disclosed to the Commission as Rose Demolition employees. *See* 2016 Rose Demolition Renewal Application at 12-14. In the Emerald Renewal Application, the Applicant also disclosed six vehicle operators. *See* Emerald Renewal Application at 12. Each of them previously was a Rose Demolition vehicle operator. *See* Rose Demolition Renewal Application at 15.

The Applicant did not disclose any vehicles on its original registration Application. *See* Emerald Registration Application at 19. Then, within a few weeks of having its application granted, the Applicant disclosed eight vehicles. *See* September 25, 2017 Roster of Vehicles. As of July 2020, seven of those eight vehicles were still owned by Rose Demolition. *See id.*; *see also* New York State DMV Compass Printout. Subsequently, in separate disclosures, the Applicant disclosed five additional vehicles to the Commission. New York State Department of Motor Vehicles records demonstrate that, as of July 2020, Rose Demolition owned each of those vehicles. *See* New York State DMV Compass Printout, dated July 1, 2020.

The overlap of employees and vehicles became clearer when, on or about December 4, 2017, a vehicle registered to Rose Demolition and operated by an individual named Carlos Valero was involved in a crash. *See* December 4, 2017 MV-104AN Police Accident Report. Two months prior, the Applicant had disclosed Valero to the Commission as one of its employees. *See id.* Thus, in this incident, an employee of the Applicant was driving a vehicle owned by Rose Demolition.

In the Applicant’s Response, the Applicant does not dispute any of the facts described above. Instead, the Applicant’s Response argues that: (1) “assertions concerning payment of vehicles and employees are not asserted to violate any rule of the Commission”; (2) “it is a self-evident fact that a business that closes most often sells its assets to a business in the industry... There is no assertion, nor basis to conclude, that a purchaser is legally limited in the number of assets it may purchase from a closed company. The acquisition of trucks alone is not a meaningful fact”; (3) “employees of a closed business typically find a new job in the same industry. The fact that some of the drivers had been employees of a barred company alone is not a meaningful fact”; and (4) “the Recommendation also implies that the acceptance of funds by Emerald while it is providing services to Rose has meaning as to the control of Emerald. There is no assertion of fact concerning the funds that implies control, nor assertion that said acceptance constitutes a violation of any regulation.” *See* Response at 1-2. None of these claims or arguments rebut the grounds for denial set forth in the Notice; nor do they provide a basis for rejecting the staff’s denial recommendation.

## ***Basis for Denial***

### **1. The Commission Previously Found that the Applicant's Alter-Ego Company – Rose Demolition and Carting Inc. – Lacked Good Character, Honesty, and Integrity, and Denied Its Renewal Application.**

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.” *See* Admin. Code § 16-509(c). The evidence set forth above establishes that the Applicant is a thinly veiled alter ego of Rose Demolition.

The Commission previously found that Rose Demolition lacked good character, honesty, and integrity because it was convicted of offering a false instrument for filing in the first degree, a class E felony, and because Rose Demolition and principal Doheny provided the Commission with false and misleading information. As a result, the Commission denied Rose Demolition's renewal application. Rose Demolition challenged the denial in an Article 78 proceeding. But, while the Article 78 proceeding was pending, the Applicant was incorporated and applied for a Commission-issued registration. After the Court denied Rose Demolition's Article 78 petition, Rose Demolition elected not to appeal that decision.

Less than two weeks after the Commission granted the Applicant's registration, the Applicant opened a bank account at the same bank and same branch that Rose Demolition was using. Beginning approximately one week after the Applicant opened the bank account, Rose Demolition began transferring money into that account. Between September 2017 and May 2018, Rose Demolition transferred \$222,500 into the Applicant's bank account. Additionally, the Applicant and Rose Demolition both use the same payroll company, and the Applicant's sole disclosed principal (Budde) and Doheny (a principal of Rose Demolition) have full authority to act on behalf of both companies with respect to their common payroll company. This fact alone makes Doheny a principal of the Applicant.

The two companies also have numerous employees and vehicles in common. The Applicant disclosed that it employs a total of 15 employees and vehicle operators, 12 of which worked for Rose Demolition. And the Applicant disclosed a total of 13 trade waste vehicles, 12 of which were still owned by Rose Demolition as of July 2020. Finally, the Applicant's garage address was also used as Rose Demolition's garage and is still owned by an entity of which Doheny is the managing member.

The Applicant's Response does not dispute the transfer of funds from Rose Demolition to the Applicant. Instead, the Applicant argues, without providing any evidence or further explanation, that “acceptance of funds by Emerald while it is providing services to Rose has [no] meaning as to control of Emerald.” *See* Applicant's Response at 2. The Applicant also declares generally, without providing any evidence specific to this Applicant, that “a business that closes often sells its assets to a business in the industry,” and that “employees of a closed business typically find a new job in the same industry.” *See* Response at 1-2. Yet the Applicant's Response does not claim that such is the case here. Instead, the evidence in this matter demonstrates that Rose Demolition still owns all but one of the Applicant's vehicles; the Applicant has provided no evidence to the contrary. The Applicant's Response also does not address the Applicant's use of a garage that is still owned by

Doheny, the Applicant's use of the same payroll company as Rose Demolition, Doheny's full authority to act on behalf of the Applicant with respect to the payroll company, the Applicant's use of the same bank branch that Rose Demolition used, or the timing of the denial of Rose Demolition's registration renewal application and the creation of the Applicant.

Because the Applicant is Rose Demolition's alter ego and successor corporation, the Commission's findings against Rose Demolition and denial of its renewal application is also fully applicable to the Applicant. In the Applicant's Response, the Applicant did not provide any evidence to dispute that it is Rose Demolition's alter ego and successor corporation. Accordingly, the Commission denies the Emerald Renewal Application on this independently sufficient ground.

## **2. The Applicant Failed to Provide Truthful Information to the Commission.**

"The commission may refuse to issue a license or registration to an applicant [for] ... failure by such applicant to provide truthful information in connection with the application." Admin. Code § 16-509(a)(i). The term "applicant" includes both the applicant business and any "principal" of the business. *See* Admin. Code §§ 16-501(a); 16-501(d). The definition of "principal" (which is included in the instructions for the application) includes corporate officers and directors, all stockholders holding 10 percent or more of the outstanding shares of the corporation *and all other persons participating directly or indirectly in the control of such business entity*. *See* Admin. Code § 16-501(d) (emphasis added).

As noted, the evidence establishes that Doheny is a principal of the Applicant. The payroll company that both the Applicant and Rose Demolition use stated that Doheny and Budde have "full authority" to act on behalf of the Applicant. Doheny is also a principal of Rose Demolition, whose registration renewal application the Commission denied due to a lack of good character, honesty and integrity. Yet, the Applicant failed to disclose Doheny in any capacity in the Emerald Registration Application, the Emerald Renewal Application, or any other submission by the Applicant. Given Doheny's long history with the Commission and its rules, he likely knew that any application that contained his name would result in a denial of that application. Thus, the Applicant and Doheny deceived the Commission by omitting his name from the Applicant's applications. By doing so, the Applicant failed to provide truthful information to the Commission. The Applicant's Response did not provide any compelling arguments and did not offer any evidence on this point. For this independently sufficient reason, the Commission denies the Emerald Renewal Application.

## **3. The Applicant Has Failed to Demonstrate Eligibility for a Trade Waste License.**

"The commission may refuse to issue a license or registration to an applicant . . . who has otherwise failed to demonstrate its eligibility for such license under this chapter." *See* Admin. Code § 16-509(b). The Applicant has failed to demonstrate its eligibility for a trade waste license. Instead, it has demonstrated that it is the alter ego of Rose Demolition, a company whose registration renewal the Commission denied.

Rose Demolition sought to reverse the Commission's denial decision by filing an Article 78 Petition in New York State Supreme Court. While that lawsuit was pending, the Applicant business was formed and applied to the Commission for a registration. Once the Applicant was granted a

registration, Rose Demolition did not appeal the Court's decision against it. Rose Demolition likely saw no need to do so; it simply began to operate as Emerald Carting. As the alter ego of Rose Demolition, the Applicant is not eligible for a trade waste license. The Applicant's Response did not provide any compelling arguments and did not provide any evidence on this point. For this independently sufficient reason, the Commission denies the Emerald Renewal Application.

***Conclusion***

The Commission is vested with broad discretion to refuse to issue a license or an exemption from the license requirement to any applicant it determines lacks good character, honesty and integrity. The record as detailed herein demonstrates that the Applicant lacks those essential qualities. Accordingly, based on the three independently sufficient grounds detailed above, the Commission denies the Emerald Renewal Application.

This registration denial is effective immediately. Emerald Carting Services Corp. may not operate as a trade waste business in the City of New York.

Dated: January 19, 2021

THE NEW YORK CITY  
BUSINESS INTEGRITY COMMISSION

**Approved at January 19, 2021  
Telephonic Commission Meeting**

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Noah D. Genel  
Commissioner and Chair

**Approved at January 19, 2021  
Telephonic Commission Meeting**

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Edward Grayson, Commissioner  
Department of Sanitation

**Approved at January 19, 2021  
Telephonic Commission Meeting**

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Margaret Garnett, Commissioner  
Department of Investigation

**Approved at January 19, 2021  
Telephonic Commission Meeting**

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Lorelei Salas, Commissioner  
Department of Consumer and Worker Protection

**Approved at January 19, 2021  
Telephonic Commission Meeting**

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

**Approved at January 19, 2021  
Telephonic Commission Meeting**

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John Dusanenko, Captain  
(Designee)  
New York City Police Department