



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 APPLICATION OF RED STAR TRADING, INC.
FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS**

I. Introduction

Red Star Trading, Inc. has applied to the New York City Business Integrity Commission for an exemption from the Commission's trade waste licensing requirements "to operate a trade waste business solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation." Local Law 42 of 1996 authorizes the Commission to review and make determinations on such applications. *See* Title 16-A, New York City Administrative Code ("Administrative Code" or "Admin. Code") § 16-505(a).

On January 4, 2018, the Commission's staff personally served the principal of Red Star with the Commission's Notice to the Applicant of the Grounds to Deny the Application of Red Star Trading, Inc. for a Registration to Operate as a Trade Waste Business (the "Notice"). Red Star Trading, Inc. had 10 business days to respond, until January 19, 2018. *See* 17 Rules of the City of New York ("RCNY") § 2-08(a). The Commission received no formal response from Red Star. (On January 5, 2018, the Applicant's principal called a member of the Commission's staff after receiving the notice and informed the staff member that Red Star is "closed." She further stated that she would not be submitting a formal response and will "ignore" the Notice.)

The Commission has completed its review of Red Star's application, having considered the Notice and Red Star's lack of formal response. Based on the record as to the applicant, the Commission denies Red Star's application because the company lacks good character, honesty, and integrity based on the following three independently-sufficient reasons:

- 1. Red Star's sole principal was an undisclosed principal of a predecessor company that the Commission would be authorized to deny a registration;**
- 2. Red Star is a successor corporation to a company that was found to have engaged in illegal dumping and operating a transfer station illegally; and**
- 3. Red Star provided false and misleading information to the Commission in its registration application.**

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, 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.

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 such 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 thereof. *Id.* at § 16-501(a).

The Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making its determination on 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.

Id. at § 16-509(a)(i)-(x). *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 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). *See also* Admin. Code § 16-509(a)(i) (failure to provide truthful information in connection with application as a consideration for denial). 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.” *Id.* at § 16-509(c). *See also id.* at § 16-504(a). 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 § 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.*, 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 (N.Y. 1997).

III. Statement of Facts

A. The Red Star Application

On September 28, 2015, Red Star applied to the Commission for an exemption from the Commission’s licensing requirements to operate a business that removes solely construction and demolition debris. *See* Red Star Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris (the “Red Star Application”). Red Star disclosed Min Wu as its sole principal and driver. *Id.* at 13, 18. The Red Star Application further represented that Wu had not been a principal in any other trade waste business during the past 10 years. *Id.* at 4. The Administrative Code defines “principal” in this context, in relevant part, as 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. Admin Code. at § 16-501(d).

Among the other disclosures on the Red Star Application, Red Star listed 56-03 Cooper Avenue, Ridgewood, New York, as its office, mailing, and garage address and the company’s business telephone number as (212) 767-9177 and cellular number as (718) 710-5818. Wu certified under oath that all the information contained in the Red Star Application was “full, complete and truthful.” Red Star Application at 20. However, as the Commission’s investigation

uncovered, Wu in fact had been a principal – albeit undisclosed – of a trade waste business formerly registered with the Commission: GW Metal Inc. (“GW”).

B. GW Metal Inc.

On October 27, 2009, GW filed its first application for an exemption from the Commission’s licensing requirements to operate a business removing solely construction and demolition debris. *See* GW Original Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris (the “GW Original Application”). The GW Application listed Guo Junhui as the sole principal and driver for the company. *Id.* at 13, 18. GW reported that both its business telephone number and cellular telephone number was (718) 710-5818. *Id.* at 1. This is the same cellular telephone number disclosed on the Red Star Application. *See* Red Star Application at 1. Junhui disclosed his email address as minwu11355@yahoo.com.¹ *See* GW Original Application at 1. Junhui certified under oath that all the information contained in the GW Original Application was “full, complete and truthful.” *Id.* at 20. The Commission granted the application and issued GW a class 2 registration with an effective date of February 1, 2010. *See* GW Original Registration Order.

GW subsequently filed two registration renewal applications with the Commission. *See* GW Renewal Application for a License or Registration as a Trade Waste Business dated January 1, 2012 (“GW First Renewal Application”); GW Renewal Application for a License or Registration as a Trade Waste Business dated January 30, 2014 (“GW Second Renewal Application”). The GW First Renewal Application disclosed that GW’s garage address had changed to 56-03 Cooper Avenue, Ridgewood, New York.² *See* GW First Renewal Application at 2. It also disclosed a new cellular telephone number of (212) 767-9177. *Id.* at 7. Junhui signed the certification for the GW First Renewal Application. *Id.* at 12. The GW Second Renewal Application contains the same information as the GW First Renewal Application, except that Wu – not Junhui – signed the certification. *See* GW Second Renewal Application at 12. This fact is interesting given that Wu was not otherwise disclosed in that application in any capacity. In both applications, among other representations, GW stated that neither the company nor any of its principals had been charged with any civil or administrative violations by any government agency. *See* GW First Renewal Application at 4; GW Second Renewal Application at 4. The Commission granted both applications. *See* GW First Registration Renewal Certificate; GW Second Registration Renewal Certificate.

C. GW’s Administrative Violations

Contrary to GW’s representations that it had not received any administrative violations, between July 29, 2011 and April 30, 2015, the New York City Department of Sanitation (“DSNY”) issued seven violations to GW for offenses related to illegal dumping and operating a transfer station without a permit. *See* ECB violation #017506225; ECB Violation #0175020827; ECB Violation #0175015592; ECB Violation #0175028976; ECB Violation #0175028985; ECB

¹ Notably, this appears to be Wu’s email address.

² This address was also disclosed as Junhui’s home address. *See* GW First Renewal Application at 7.

Violation #0185126911; ECB Violation #0186188027.³ The administrative violations were heard before the City of New York's Environmental Control Board ("ECB"). All seven violations were resolved with either a finding of liability by ECB or an admission to the charges by GW. *See* ECB Decision and Order #1; ECB Decision and Order #2; ECB Decision and Order #3; ECB Decision and Order #4; ECB Decision and Order #5; ECB Decision and Order #6; ECB Decision and Order #8. For three of the violations, ECB imposed a civil penalty of \$5,000. *See* ECB Decision and Order #4; ECB Decision and Order #5; ECB Decision and Order #8. On May 21, 2015, the Commission issued GW a Notice of Violation for failing to disclose those administrative violations and for providing false and misleading information on the GW First Renewal Application and the GW Second Renewal Application. *See* Notice of Violation, Violation Number TWC-211802 ("GW NOV") at 5-6. A month and a half later, on July 10, 2015, Red Star was formed. *See* printout from NYS Department of State website of "Entity Information" for Red Star Trading Inc., dated October 6, 2015.

On July 16, 2015, the New York City Office of Administrative Trials ("OATH") held a hearing at which GW contested the charges in the GW NOV. *See Business Integrity Commission v. GW Metal Inc.*, Index No. 152548, hearing transcript ("Hearing Tr."). After the hearing, GW and the Commission agreed to settle the GW NOV. *See* Stipulation of Settlement, TWC- 211802. On October 12, 2015, Junhui signed a Stipulation of Settlement on behalf of GW in which GW admitted to the violations and agreed to pay a fine of \$20,000. *Id.* GW also agreed to surrender its Commission-issued registration by November 30, 2015. *Id.* On December 7, 2015, GW surrendered its registration. *See* Receipt for returning Commission-issued trade waste license plates, dated December 7, 2015; Stipulation of Settlement, TWC- 211802.

Importantly, Wu appeared at six of GW's seven ECB hearings on behalf of the company. Her testimony and actions at those hearings demonstrate that she was a part owner of the business and authorized to appear on the company's behalf. In fact, during the hearing held on August 14, 2013, Wu testified that she is 50% owner of GW. *See* ECB Decision and Order #5. Moreover, during the hearing on September 10, 2014, she stated to the Court that both she and her husband (Junhui) are owners of GW. *See* ECB Decision and Order #6.

D. Wu's Involvement in GW

In addition to appearing at GW's ECB hearings, Wu acted on GW's behalf on numerous other occasions when dealing with the Commission. As noted above, Wu signed the certification for the GW Second Renewal Application. On September 9, 2014, she also lodged a complaint with the Commission on behalf of GW regarding an incident that took place at GW's yard. *See* BIC Complaint 20140910-191088. Wu represented that she was making the complaint on behalf of GW and that she was calling because the company received an administrative violation for illegal dumping and one of their vehicles was impounded. *See id.* She continued to represent the company when she appeared at the July 16, 2015 OATH hearing. *See* Hearing Tr. at 5-6. During the hearing, Wu sought the Court's permission to speak on the company's behalf because Junhui "doesn't know what's going on." *Id.* at 13. Then, on November 30, 2015, she appeared at the

³ Two additional administrative violations were issued to Junhui personally. *See* ECB Violation #0185126920; ECB Violation #0186188018.

Commission's offices in order to pay the \$20,000 fine imposed on GW as part of the Stipulation of Settlement for TWC-211802. *See* BIC Staff Notes #1.

Wu also appears as a signatory on GW's Cathay Bank account. *See* Cathay Bank signature card for GW Metal Inc. account ("GW Signature Card"). She signed numerous checks on behalf of GW. *See* Cathay Bank Account Deposits for Red Star Trading Inc. ("Red Star Deposits"). Wu's title in the company, as it appears on the GW Signature Card, was "Secretary." *Id.* On August 24, 2014, Wu opened a personal account with the same bank. *See* Cathay Bank Consumer Account Application for Min Wu, dated August 24, 2014 ("Wu Bank Account Application"). In the Wu Bank Account Application, Wu listed her employer as "GW Metal Inc." *Id.*

E. Relationship between GW and Red Star

The Red Star Application makes clear that Red Star is a successor business to GW. First, Wu was heavily involved in both companies. She is the sole-disclosed principal of Red Star. And, as described herein, she was so involved in GW's operations that she qualifies as a principal of GW, notwithstanding the fact that GW never disclosed her as such. In addition, both companies have the same address and telephone numbers. On two occasions, members of the Commission's staff observed Junhui transporting trade waste in vehicles registered to Red Star. *See* Notice of Violation TWC- 213697 (charging a violation of Admin. Code § 16-505(a), operating without a valid Commission-issued license or registration; Notice of Violation TWC-214365 (charging a violation of Admin. Code § 16-505(a), operating without a valid Commission-issued license or registration). Furthermore, one of the trucks disclosed on the Red Star Application was previously disclosed on the GW Second Renewal Application and had Commission-issued trade waste license plates. *See* Red Star Application at 19; GW Second Renewal Application at 9.

The companies are also connected financially, in that Red Star received numerous payments from GW. Red Star's bank account revealed that between June 1, 2015 and October 25, 2016, 10 checks from GW were deposited into Red Star's account, totaling \$35,600. *See* Red Star Deposits. All 10 checks were signed by Wu. *Id.* The checks represented about one-third of all checks deposited into Red Star's account for the above outlined time period. *Id.*

IV. Basis for Denial

1. Red Star's sole principal was an undisclosed principal of a predecessor company that the Commission would be authorized to deny a registration.

The Commission may deny an application to operate a trade waste business where it determines that the applicant lacks good character, honesty, and integrity. *See* Admin. Code § 16-509(a). One factor that the Commission may consider in making this determination is whether a principal of the applicant was a "principal in a predecessor trade waste business . . . where the commission would be authorized to deny a license to such predecessor business . . ." *Id.* at § 16-509(a)(vii). The term "predecessor trade waste business" means as "any business engaged in the removal, collection or disposal of trade waste in which one or more principals of the applicant were principals in the five year period preceding the application." *Id.* at § 16-508(b).

The Commission's definition of "principal" includes all persons "participating directly or indirectly in the control of such business entity." *Id.* at § 16-501(d). At a hearing at OATH, Wu stated that she was a part owner of GW. Moreover, Wu clearly exerted direct control over the company by appearing at OATH as a representative of GW and signing the certification on one of GW's applications to the Commission. Additionally, Wu was a signatory on the company's bank account and signed checks on behalf of the company. And the email address disclosed on all of GW's applications to the Commission is Wu's email address. None of this is particularly surprising given that the sole-disclosed principal of GW is Wu's husband. Clearly, Wu was a principal of GW, though she was never disclosed as such.

It is equally clear that GW is a "predecessor trade waste business." Wu was a principal of GW within the five-year period preceding Red Star's application. GW operated as a trade waste business between February 2010 (when the Commission approved its first application) and December 2015 (when GW surrendered its registration). Red Star was formed in July 2015. Thus, Wu's role as principal of both GW and Red Star actually overlapped: Red Star was formed in July 2015, and GW operated as a trade waste business until December 2015.

Lastly, the Commission would have been authorized to deny GW a registration based on its failure to disclose Wu as a principal and its illegal dumping activity. First, as noted above, GW failed to disclose Wu as a principal when she clearly was one. The Commission could deny GW a registration for this failure to disclose pursuant to Administrative Code § 16-509(a)(i). Second, the Commission could also deny GW a registration for as discussed above, GW has been found in violation of Administrative Code § 16-119 for offenses related to illegal dumping. Such a finding would constitute a sufficient ground to deny a registration pursuant to Administrative Code § 16-509(a)(iv). In this case, GW surrendered its registration as part of the settlement of the illegal dumping charges. However, absent that resolution, the Commission could have denied GW's next registration application.

Thus, Red Star's application should be denied because its principal was a principal of GW within the previous five years, and the Commission could have denied GW's registration application based on its failure to disclose Wu as a principal and its admission to the charge of illegal dumping. The Applicant has not disputed the Commission's staff's assertions on this point. Therefore, the Commission denies Red Star's application on this basis.

2. Red Star is a successor corporation to a company that was found to have engaged in illegal dumping and operating a transfer station illegally.

Another factor that the Commission may consider in determining whether an applicant lacks good character, honesty and integrity is whether there has been a finding of liability in an administrative action "that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought." *Id.* at § 16-509(a)(iv).

As fully discussed above, GW was found to be in violation of administrative charges related to illegal dumping and operating a transfer station without a permit. These violations directly relate to the fitness of the applicant to conduct a trade waste business; they establish that GW was not properly dumping the waste it was collecting. Such conduct clearly poses a health and safety hazard to the residents of New York City.

Though it was GW that was found to be in violation of the administrative charges described above, the facts in this matter demonstrate that GW and Red Star are actually the same company. Wu is a principal of both companies. The two companies share addresses, phone numbers, trucks, drivers, and principals. Additionally, Red Star was formed shortly after GW was informed of the GW NOV, which led to GW surrendering its registration, likely as a safety net in case GW lost its registration, which it ultimately did. Thus, GW's conduct related to illegal dumping and operating a transfer station without a permit should be ascribed to Red Star. The Applicant has not disputed the Commission's staff's assertions on this point. Therefore, the Commission denies Red Star's application on this basis.

3. The Applicant provided false and misleading information to the Commission in its Registration Application.

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).

The class 2 registration application requires the applicant to disclose, among other things, whether its principals were principals in any other trade waste business during the past 10 years. The Red Star Application – the contents of which Wu certified as true – failed to disclose the fact that Wu was a principal of GW. *See* Red Star Application at 4, 17. Red Star likely omitted this information to avoid any negative impact on the Red Star Application from Wu's affiliation with GW.

Thus, the statement on the Red Star Application that Wu was not a principal of another trade waste business is false and misleading. This false statement through omission further demonstrates that Red Star lacks good character, honesty and integrity. The Applicant has not disputed the Commission's staff's assertions on this point. Therefore, the Commission denies Red Star's application on this basis.

V. Conclusion

The Commission is vested with broad discretion to refuse to issue a license or refuse to grant an exemption from the license requirement and issue a registration in lieu of a license to any applicant that it determines lacks good character, honesty, and integrity. The evidence set forth above demonstrates convincingly that Red Star lacks those qualities. Accordingly, based on the three independently-sufficient grounds set forth herein, the Commission denies Red Star's application.

This denial decision is effective immediately. Red Star may not operate as a trade waste business in the City of New York.

Dated: February 20, 2018

THE NEW YORK CITY
BUSINESS INTEGRITY COMMISSION



Daniel D. Brownell
Commissioner and Chair



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Department of Sanitation



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