

NEW YORK STATE
DEPARTMENT OF ECONOMIC DEVELOPMENT
633 THIRD AVENUE
NEW YORK, NY 10017

In the Matter

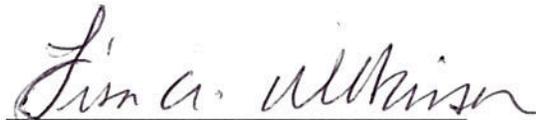
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the Application of **King Ventures, LLC**
for Certification as a Women-owned Business Enterprise
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 55834

RECOMMENDED ORDER

- by -



Lisa A. Wilkinson
Administrative Law Judge

July 6, 2017

SUMMARY

This report recommends that the determination of the Division of Minority and Women's Business Development (“Division”) of the New York State Department of Economic Development (Department) to deny King Ventures, LLC (“King Ventures” or “applicant”) certification as a women-owned business enterprise¹ (“WBE”) be affirmed, for the reasons set forth below.

PROCEEDINGS

This matter involves the appeal by applicant, pursuant to New York State Executive Law article 15-A and title 5 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“NYCRR”) parts 140-144, challenging the determination of the Division that King Ventures does not meet the eligibility criteria for certification as a WBE.

Hadassah Klein submitted an application on behalf of King Ventures for WBE certification on June 28, 2016 (WBE Exhibit 1). The Division denied King Venture’s WBE application by letter dated September 19, 2016 (WBE Exhibit 3). The Division identified two grounds for denial: (1) women do not own at least 51% of the business enterprise (5 NYCRR 140.1[tt][1][i]); and (2) the application does not demonstrate that Ms. Klein made a contribution of capital or expertise to the business enterprise (*see* 5 NYCRR 144.2[a][2]).

Applicant filed a timely notice of appeal from the denial dated October 11, 2016 and submitted a written appeal on November 2, 2016. Applicant’s submission consisted of a letter from Ms. Klein and a statement from Loketch & Partners LLP dated October 31, 2016 (Applicant Exhibit 1).

The Division filed a response and exhibits with the Office of Hearings and Mediation Services on June 16, 2017 and this matter was assigned to me. The Division’s response included the application (WBE Exhibit 1), applicant’s response to questions 2-4 and 6 (WBE Exhibit 2), the Division’s denial letter dated September 19, 2016 (WBE Exhibit 3), and Form 1040 Schedule C Profit or Loss from Business for the tax year 2015 filed by King Ventures (Harvey Klein sole proprietor) (WBE Exhibit 4).

On July 10, 2017, I received a call from King Ventures. I understood that I was speaking to Ms. Klein, whom I assumed was Hadassah Klein. Ms. Klein stated that she took issue with Mr. Harmonick’s response to King Ventures’ written appeal and wanted to correct the record. I

¹ The term “women-owned business enterprise” applies to an enterprise that meets the requisite criteria on the basis of the ownership and control of one woman or of multiple women (*see* 5 NYCRR 140.1[tt] [defining a women-owned business enterprise as one that is, inter alia, “at least 51 percent owned by one or more United States citizens or permanent resident aliens who are women”]).

advised Ms. Klein that I could not speak to her regarding the merits of the case, and that if she wanted to correspond with me she needed to do so in writing and copy Mr. Harmonick.

On July 11, 2017, “Sue”, a representative of King Ventures, submitted the 2016 Form 1040 Schedule C for King Ventures via electronic mail along with an unsigned statement, purportedly from Ms. Klein, in further support of the WBE appeal. I replied via electronic mail that I would not accept these documents into the record because they were not submitted with the application and were not before the Department at the time it made its decision.

Phillip Harmonick, Esq., Assistant Counsel, New York State Department of Economic Development represents the Division. Applicant is represented by Hadassah Klein. I received correspondence on behalf of applicant from a person who identified herself as “Sue,” but did not accept the documents into the record. A list of exhibits is attached to this recommended order.

ELIGIBILITY CRITERIA

The eligibility criteria pertaining to certification as a women-owned business enterprise are established by regulation (*see* 5 NYCRR 144.2). For the purposes of determining whether an applicant should be granted WBE status, the ownership, operation, and control of the business enterprise are assessed on the basis of information supplied through the application process. The Division reviews the enterprise as it existed at the time that the application was made, based on representations in the application itself, and on information revealed in supplemental submissions and any interviews that the Division’s analyst may have conducted.

STANDARD OF REVIEW

On this administrative appeal, applicant bears the burden of proof to establish that the Division's denial of King Ventures’ application for WBE certification is not supported by substantial evidence (*see* State Administrative Procedure Act § 306[1]). The substantial evidence standard “demands only that a given inference is reasonable and plausible, not necessarily the most probable,” and applicant must demonstrate that the Division's conclusions and factual determinations are not supported by “such relevant proof as a reasonable mind may accept as adequate” (*Matter of Ridge Rd. Fire Dist. v Schiano*, 16 NY3d 494, 499 [2011] (internal quotation marks and citations omitted).

POSITIONS OF THE PARTIES

Applicant

On appeal, Hadassah Klein asserts that beginning in 2009, she became 100% owner of King Ventures. Ms. Klein claims that her accountant made an error on the 2014 and 2015 tax

returns and recorded Harvey Klein as the sole proprietor. Mrs. Klein's accountant stated that the error would be corrected on the 2016 tax return. With respect to her capital contribution, Ms. Klein states that Harvey Klein transferred ownership of King Ventures to her and she is the final decision maker, oversees all employees and operations and approves all invoices, bills and purchases. (*See* Applicant Exhibit 1 [Applicant Appeal Letter dated November 2, 2016] and Applicant Exhibit 2 [Letter from Louis Loketch, CPA, Loketch & Partners, LLP, dated October 31, 2016].)

Division

The Division argues that Ms. Klein has provided no evidence that she is in fact an owner of the business and that all relevant evidence supports the Division's conclusion that Ms. Klein's husband, Harvey Klein, is the owner (*see* Division Response at 3). The Division further asserts that even if Ms. Klein is an owner, the application contained no evidence that Ms. Klein made any contributions of money, property, equipment, or expertise to King Ventures and certainly not in an amount proportionate to her equity interest in the business (*see* Division Response at 4). Accordingly, the Division requests that its determination to deny WBE certification to King Ventures be upheld.

FINDINGS OF FACT

1. On June 28, 2016, Hadassah Klein submitted an application to the New York State Department of Economic Development to certify King Ventures, located at 12 College Road, Monsey, New York, as a WBE (*see* WBE Exhibit 1 at Bates 1).
2. Harvey Klein is the president and sole proprietor of King Ventures. He is also the contact person for the WBE application. (*See* WBE Exhibit 1 at Bates 3; WBE Exhibit 4 at Bates 15-16 [Form 1040 Schedule C 2015].)
3. King Ventures employs three full time employees (*see* WBE Exhibit 1 at Bates 3).
4. King Ventures sells various printed and non-printed promotion items such as gifts, shirts, mugs and baseball caps (*see* WBE Exhibit 1 at Bates 4).
5. On August 24, 2016, Matthew LeFebvre, Senior Certification Analyst, asked Ms. Klein to explain how she established her ownership in the business through contributions of money, property or expertise (*see* WBE Exhibit 1 at Bates 7).
6. Ms. Klein responded to Mr. LeFebvre that "[i]n order for Harvey Klein to focus on and help start his other business ventures, Harvey Klein transferred ownership of

King Ventures to Hadassah Klein” (*see* WBE Exhibit 2 at Bates 9 [response to question 2]).

DISCUSSION

This report considers applicant's appeal from the Division's determination to deny certification of King Ventures as a women-owned business enterprise pursuant to Executive Law Article 15-A.

I. Ownership: Ownership Interest

Women must own at least fifty-one percent (51%) of a business enterprise for the business to meet eligibility requirements for WBE certification (5 NYCRR 140.1[tt][1][i]). Likewise, in the case of a limited liability company, at least fifty-one percent (51%) of the membership interests must be owned by women for the business to be eligible for WBE certification (5 NYCRR 144.2[a][4]). The record in this proceeding fails to demonstrate that Ms. Klein owns 51%, or indeed any portion, of King Ventures.

The most recent IRS Form 1040 Schedule C filed by Mr. and Ms. Klein with their 2015 individual income tax return identifies Mr. Klein as the sole proprietor of King Ventures (*see* Exhibit 4 at Bates 15). On August 24, 2016, Matthew LeFebvre, Senior Certification Analyst for the Division, asked Ms. Klein to explain how she acquired her ownership in King Ventures, specifically through the contribution of money, property, or expertise, and to provide documentation substantiating that contribution (*see* WBE Exhibit 1 at Bates 7). Ms. Klein responded to Mr. LeFebvre by simply stating that “[i]n order for Harvey Klein to focus on and help start his other business ventures, Harvey Klein transferred ownership of King Ventures to Hadassah Klein” (*see* WBE Exhibit 2 at Bates 9). Ms. Klein offered no evidence to support her claim of ownership.

In response to the Division’s denial letter, Ms. Klein reiterated that Mr. Klein transferred his ownership interest in King Ventures to her in 2009 (*see* Applicant 1). For the first time on appeal, she provided a letter dated October 31, 2016, from the accountant for King Ventures, Louis Loketch, CPA, Loketch & Partners, LLP (*see* Applicant 2). Mr. Loketch stated that King Ventures is wholly owned by Ms. Klein, that the 2014 and 2015 personal income tax returns erroneously indicated that Mr. Klein was the owner, and the 2016 income tax return would reflect the correct information (*see* Applicant Exhibit 2). Neither Ms. Klein nor Mr. Loketch provided any documentation to substantiate Ms. Klein’s ownership claims, or the assertion that the 2014 and 2015 income tax returns were in error.

In any event, the Loketch letter was not before the Division when it denied the application and, therefore, cannot be relied upon to overturn the Division’s determination. Likewise, Ms.

Klein's conclusory statement that her husband transferred ownership of the company to her, and her accountant's blanket claim that she owns the company, are not adequate to establish her ownership of King Ventures within the meaning of the Division's regulations. Applicant bears the burden of ensuring that the information it submits with a WBE application is accurate, and the Division is entitled to rely on that information in making its determination whether a business enterprise is eligible for WBE certification (*see* WBE Exhibit 4 at Bates 15-16). In this case, the personal tax return information submitted with King Venture's WBE application indicates that Harvey Klein, not Hadassah Klein, is the sole proprietor of the company (*see* WBE Exhibit 4 at Bates 15-16). Accordingly, the Division's determination that Ms. Klein does not own at least 51% of King Ventures is supported by substantial evidence.

II. Ownership: Capital Contribution

The Division's regulations require an applicant to demonstrate that a woman owner has made contributions proportionate to her equity interest in the business enterprise. The Division will consider contributions in the form of money, property, equipment or expertise (5 NYCRR 144.2[a][1]). This test guards against non-eligible persons transferring ownership interest to a woman for the purpose of securing certification where the woman owner has no financial stake in the business enterprise.

As noted above, in his August 24, 2016 document request, Mr. LeFebvre asked Ms. Klein to demonstrate how she acquired her ownership interest in the business through the contribution of money, property, or expertise (*see* WBE Exhibit 1 at Bates 7). Ms. Klein responded with the statement that her husband transferred his shares to her, but failed to provide any information documenting the transfer of interest to her, or her capital contributions to the business enterprise. Accordingly, the Division's determination that Ms. Klein did not make contributions to the business in proportion to her equity interest is supported by substantial evidence.

CONCLUSION

Applicant failed to meet its burden to demonstrate that the Division's determination to deny King Venture's application for certification as a WBE was not based on substantial evidence.

RECOMMENDATION

For the reasons set forth above, the Division's determination to deny King Venture's application for certification as a women-owned business enterprise should be affirmed.

Matter of King Ventures, LLC
DED File ID No. 55834
Exhibit Chart

Exhibit No.	Description
WBE 1	King Ventures June 28, 2016 WBE Certification Application
WBE 2	Applicant's Answers to Questions 2-4 and 6
WBE 3	Division's September 19, 2016 Denial Letter
WBE 4	2015 IRS Form 1040 Schedule C Profit or Loss From Business
Applicant 1	Applicant Appeal Letter dated November 2, 2016
Applicant 2	October 31, 2016 Letter from Louis Loketch, CPA (Loketch & Partners, LLP)