

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

In the Matter

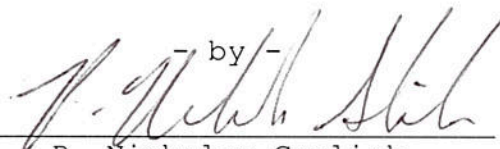
- of -

the Application of
Riviera Solutions, Inc.
For Certification as a Woman-owned Business Enterprise
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 57889

RECOMMENDED ORDER

- by -



P. Nicholas Garlick
Administrative Law Judge

August 9, 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 to deny the application of Riviera Solutions, Inc. ("applicant") for certification as a woman-owned business enterprise ("WBE") be affirmed for the reasons set forth below.¹

PROCEEDINGS

This matter involves the appeal, pursuant to New York State Executive Law ("EL") 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, by Riviera Solutions, Inc. challenging the determination of the Division that the applicant does not meet the eligibility requirements for certification as a woman-owned business enterprise.

Riviera Solutions, Inc.'s application was submitted on September 29, 2013 (Exh. DED1). In its application, applicant sought both minority-owned business enterprise (MBE) and woman-owned business enterprise (WBE) status.

The Division concluded that although applicant met the requirements for MBE status, it did not meet the requirements for WBE status. The application for WBE certification was denied by letter dated May 24, 2016, from Bette Yee, Director of Certification Operations (Exh. DED3). As explained in an attachment to Ms. Yee's letter, the application was denied for failing to meet two separate eligibility criteria related to Chui Tam's ownership and control of the applicant.

By letter dated June 28, 2016, the Division notified the applicant that its appeal should be received on or before August 10, 2016.

By letter dated July 31, 2016, the applicant submitted its written appeal which consisted of a one page letter and two exhibits (listed in the attached exhibit chart as A1 - A2).

¹ In its response, the Division notes that the business is a certified Minority-owned Business Enterprise ("MBE").

In a six page memorandum dated July 3, 2017, the Division responded to the applicant's appeal. Enclosed with the response were six exhibits, described in the attached exhibit chart as DED1-DED6).

On July 5, 2017, this matter was assigned to me.

ELIGIBILITY CRITERIA

For the purposes of determining whether an applicant should be granted or denied woman-owned business enterprise status, regulatory criteria regarding the applicant's ownership, operation, control, and independence are applied on the basis of information supplied through the application process.

The Division reviews the enterprise as it existed at the time the application was made, based on representations in the application itself, and on information revealed in supplemental submissions and interviews that are conducted by Division analysts.

STANDARD OF REVIEW

On this administrative appeal, applicant bears the burden of proving that the Division's denial of applicant's 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

Position of the Division

In its denial letter, the Division asserts that the application failed to meet two separate criteria for WBE certification.

First, the Division found that the applicant failed to demonstrate that the woman owner Chui Tam's capital

contributions are proportionate to her equity interest in the business enterprise as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1).

Second, the Division found that the corporate documents and relevant business agreements do not permit the woman owner, Chui Tam, to make decisions without restrictions, as required by 5 NYCRR 144.2(b)(2).

Position of the Applicant

Riviera Solutions, Inc. asserts that it meets the criteria for WBE certification and that the Division erred in not granting it status as a woman-owned business enterprise pursuant to Executive Law Article 15-A.

FINDINGS OF FACT

1. Riviera Solutions, Inc. provides advanced technology solutions for small businesses, government, and commercial organizations (Exh. DED1 at 3). It has a business address of P.O. Box 640174, Oakland Gardens, New York (Exh. DED1 at 1).

2. Riviera Solutions, Inc. was established on December 19, 2011. Chui Mei Tam owns 55% of the stock of the firm and her husband Steven Yam owns the remaining 45%. (Exh. DED1 at 2-3).

3. The application states that the only capital contribution made by the owners of the firm was [REDACTED] by Steven Yam (Exh. DED 1 at 3).

4. At the time of the application, Mr. Yam served as the corporation's president, and Ms. Tam served as its vice president (Exh. DED1 at 3). The bylaws of the corporation state that the president shall have general supervision of the affairs of the corporation (Exh. DED5 at 7) and as such is the highest ranking officer of the firm.

DISCUSSION

This report considers the appeal of the applicant from the Division's determination to deny certification as a woman-owned business enterprise pursuant to Executive Law Article 15-A. The Division's denial letter set forth two bases related to Ms.

Tam's ownership and control of Riviera Solutions, Inc. Each basis is discussed individually, below.

Ownership

In its denial, the Division found that the applicant failed to demonstrate that the woman owner Chui Tam's capital contributions were proportionate to her equity interest in the business enterprise as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1). The denial letter cites two relevant facts: (1) the application represents that Mr. Steven Yam has made a [REDACTED] capital contribution to Riviera Solutions, Inc. and (2) the application does not identify any capital contributions by Ms. Chui Tam to Riviera Solutions, Inc.

On her appeal, Ms. Tam states that the contributions to the corporation came from a joint bank account owned by herself and her husband. As proof of this claim she provides a copy of a letter from her banker (Exh. A1).

In its response, the Division argues that Ms. Tam failed to demonstrate that she made any contribution to the firm. The application states that only Mr. Yam made a contribution and this was in the form of [REDACTED] (Exh. DED1 at 2). The firm's 2014 federal tax return reports that [REDACTED] was paid for the capital stock and that the firm also had [REDACTED] [REDACTED] (Exh. DED4 at 3, lines 22-23), however, the Division notes there is no proof that any portion of this sum was provided by Ms. Tam. With respect to the letter from Ms. Tam's banker regarding the joint account she shares with her husband (Exh. A1), the Division argues that this document was not supplied with the application materials and, therefore, cannot be considered on appeal. Even if the letter had been before the Division before it denied the application, the Division argues, it does not show the source of the capital contributions and, at best, shows that Ms. Tam and her husband jointly funded the firm. It does not prove she provided a capital contribution in proportion to her share of the business.

Based on the evidence in the record, specifically the lack of any proof of a monetary contribution, the applicant has failed to demonstrate that the woman owner Chui Tam's capital contributions are proportionate to her equity interest in the business enterprise as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1). The Division's denial was based on substantial evidence.

Control

The second ground for denial was that the corporate documents and relevant business agreements do not permit the woman owner, Chui Tam, to make decisions without restrictions, as required by 5 NYCRR 144.2(b)(2). The denial letter cites the facts that: (1) Mr. Steven Yam is the President of Riviera Solutions, Inc.; (2) section 5.2 of the corporate bylaws of Riviera Solutions, Inc. provide that the President of the business enterprise "shall have general supervision of the affairs of the corporation"; and (3) Section 5.3 of the corporate bylaws provide that the Vice-President shall exercise the President's powers in his or her absence or disability.

On the appeal, Ms. Tam states that the title of vice-president does not accurately represent her duties with the firm and notes that she has recently been promoted to president. A letter from the firm's accountant is provided as proof of this change (Exh. A2).

In its response, the Division argues that the corporation's bylaws provide that the president is the highest ranking officer of the corporation and shall have general supervision of the affairs of the corporation (Exh. DED5 at 7). Since Mr. Yam was identified in the application and banking documents (Exh. DED 6 at 3) as the president of the corporation, Ms. Tam could not make decisions regarding the corporation without his approval. With respect to the claim on the appeal that Ms. Tam is now the corporation's president, the Division states that this change occurred after the denial and cannot be considered on appeal. Further, the letter from the firm's accountant is insufficient proof of this change (Exh. A2)

Based on the evidence in the record and the discussion above, the corporate documents and relevant business agreements do not permit the woman owner, Chui Tam, to make decisions without restrictions, as required by 5 NYCRR 144.2(b)(2). The Division's denial was based on substantial evidence.

CONCLUSIONS

1. The applicant failed to demonstrate that the woman owner Chui Tam's capital contributions are proportionate to her equity interest in the business enterprise as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1).

2. The applicant failed to demonstrate that the corporate documents and relevant business agreements permit the woman owner, Chui Tam, to make decisions without restrictions, as required by 5 NYCRR 144.2(b)(2).

RECOMMENDATION

The Division's determination to deny Riviera Solutions, Inc.'s application for certification as a woman-owned business enterprise should be affirmed, for the reasons stated in this recommended order.

**Matter of
Riviera Solutions, Inc.**

**DED File ID No. 57889
Exhibit List**

Exh. #	Description
DED1	Application
DED2	Stock certificates
DED3	Denial letter
DED4	2014 taxes
DED5	Corporate bylaws
DED6	Bank signatory information
A1	Letter from applicant's bank
A2	Letter from applicant's accountant