

NEW YORK STATE  
DEPARTMENT OF ECONOMIC DEVELOPMENT  
207 GENESEE STREET  
UTICA, NEW YORK 13501

In the Matter

- of -

the Application of ASP Wireless Solutions, Inc.  
for Certification as a Woman-owned Business Enterprise  
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 63568

RECOMMENDED ORDER

-by-



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David A. Murad  
Administrative Law Judge  
May 17, 2023

This matter considers the written appeal by ASP Wireless Solutions, Inc., (“ASP” or “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 (5 NYCRR) parts 140-144, challenging the determination of the Division of Minority and Women’s Business Development (“Division”) of the New York State Department of Economic Development (“DED”) that the business enterprise does not meet the eligibility criteria for certification as a woman-owned business enterprise (“WBE”).

### **PROCEDURAL HISTORY**

1. On November 20, 2017, Ms. Pamela Tralongo, as President/CEO, applied on behalf of ASP Wireless Solutions, Inc. for certification as a WBE. (DED Exhibit 1).
2. On February 4, 2020, the Division denied the application on the grounds that ASP failed to demonstrate that (i) Ms. Tralongo’s contributions to ASP were proportionate to her equity interest in the business; (ii) Ms. Tralongo makes decisions pertaining to the operation of the business; and (iii) Ms. Tralongo has the adequate managerial experience or technical competence to operate the business (DED Exhibit 2).
3. ASP submitted its notice of appeal dated February 25, 2020 (APP Exhibit 1).
4. A notice to proceed by written appeal was sent to ASP on May 8, 2020 (DED Exhibit 10).
5. ASP submitted its written appeal by letter dated June 1, 2020 (APP Exhibit 2).

6. The Division filed an Affidavit of Raymond Emanuel, Certification Director, dated March 8, 2023, and a brief of Laurel Wedinger-Gyimesi, Esq., counsel for the Division, dated April 21, 2023.

### **FINDINGS OF FACT**

1. ASP is an authorized Motorola dealer and manufacturer's representative, providing sales and service for Motorola products in the commercial, utility and government agencies (DED Exhibit 1).
2. Ms. Pamela Tralongo is the President/CEO and 75% owner of ASP. Her husband, Mark Radford, is the Secretary and Treasurer, and 25% owner of the business (DED Exhibit 1)
3. ASP was established on November 3, 2015. Ms. Tralongo and Mr. Radford jointly contributed \$8,000 in the form of loans to the business (DED Exhibit 3).
4. The signature card on the ASP bank account indicates that Ms. Tralongo and Mr. Radford are equal signatories on the account (DED Exhibit 5).
5. Mr. Radford shares in every managerial operation aspect of the business, including estimating, preparing bids, marketing and sales, supervising field operations and negotiating contracts (DED Exhibit 1).
6. Ms. Tralongo's duties include inside sales, email correspondence, customer invoicing, accounts receivable and payable, placing orders, tracking shipments and responding to customer inquiries (DED Exhibit 1).

7. Mr. Radford's duties include developing customer opportunities for two-way radio systems, developing customer base, attending customer meetings regarding ongoing projects, providing price quotes, submitting competitive bids and providing FCC licensing coordination (DED Exhibit 1).
8. Ms. Tralongo's resume states that she has sales and marketing experience in the pharmaceutical industry and a divorce mediation practice She worked at ASP and MediMedia Health, Inc. as a Business Service Manager, A Better Solution, Inc. as a Client Services Manager and Arthur Schuman, Inc. as an Account Manager (DED Exhibit 7).
9. Mr. Radford's resume states that he worked for Motorola as an Account Manager for 19 years and a Senior Account Manager for 15 years (DED Exhibit 8).

#### **APPLICABLE LAW**

5 NYCRR former § 144.2 (a)(1) states as follows:

The contribution of minority group member(s) or woman owner must be proportionate to their equity interest in the business enterprise, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise.

5 NYCRR former § 144.2 (b)(1) states as follows:

Decisions pertaining to the operations of the business enterprise must be made by...women claiming ownership of that business enterprise. The following will be considered in this regard:

...(i)... Women must have adequate managerial experience or technical competence in the business enterprise seeking certification.

## STANDARD OF REVIEW

On this administrative appeal, applicant bears the burden of proof to establish that Division staff's determination to deny the application filed by ASP for certification as a WBE 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 Division staff's conclusions and factual determinations are not supported by "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact." (*Matter of Ridge Rd. Fire Dist. v Schiano*, 16 NY3d 494, 499 [2011]).

The review is limited to such information that was before the division at the time of the denial determination (5 NYCRR §145.2(b)(1)). Evidence that seeks to clarify or explain previously submitted materials will be considered, however new evidence will not be considered. (*See Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021)).

Accordingly, applicant's attachments to APP Exhibit 2 will not be considered unless otherwise noted below.

## DISCUSSION

### Ownership

The Division denied ASP's application for certification as a WBE on the basis that ASP failed to demonstrate that Ms. Tralongo made contributions to the business that is proportional to her 75% equity interest in the business enterprise, as required by 5 NYCRR former §144.2(a)(1) (DED Exhibit 2).

Ms. Tralongo does not claim to have contributed property, equipment or expertise to the business that is proportional to her equity interest in the business. She claims that the \$8,000 loan she and her husband jointly made to the business constitutes her proportional monetary contribution. She claims the money was paid back in full, but the document evidencing repayment does not establish proof of an independent capital contribution by Ms. Tralongo in forming ASP. It merely shows that an ASP check in the amount of \$8,000 was deposited into the joint bank account (APP Exhibit 2).

The Division interprets 5 NYCRR former §144.2(a)(1) to require an applicant to demonstrate that the woman-owner's contribution came from assets belonging solely to the woman-owner. Given this criterion, the Division consistently denies applications for WBE certification where, as here, an applicant fails to substantiate the source of the capital contributions by the woman-owner. See *Matter of Darr Construction, Inc.*, Recommended Order dated August 30, 2022; Final Order dated November 7, 2022.

Ms. Tralongo concedes that the checks representing payment for the stock ownership of ASP were issued from a joint bank account she holds with her husband, Mark Radford (DED Exhibit 11). The Division consistently denies applications for WBE certification where the source of the capital contribution is from a jointly owned bank account. See *Matter of S.C. Spencer Electric, Inc.*, Recommended Order dated July 29, 2021; Final Order dated March 31, 2022. See also *Matter of Hertel Steel, Inc.*, Recommended Order dated February 10, 2017; Final Order 17-12 dated March 10, 2017.

Since Mr. Radford earns the majority of the income between them, as evidenced by their personal tax returns, Ms. Tralongo's contribution from the joint account could not have been proportional to her ownership interest (DED Exhibit 9). She did not provide any explanation or documentation to show a proportional contribution.

Ms. Tralongo did not establish that she made a contribution proportional to her 75% ownership interest and has failed to demonstrate that denial of the certification was not supported by substantial evidence.

#### Operation

The Division further denied ASP's application on the basis that Ms. Tralongo, as the woman-owner, does not make decisions pertaining to the operation of the business enterprise, as required under 5 NYCRR former §144.2(b)(1). This requires proof that the woman business owner independently controls its day-to-day operations and its core revenue-generating functions. *Matter of J.C. Smith Inc. v. New York State Dept. of Economic Dev.*, 163 AD 3d, 1517 (4<sup>th</sup> Dept. 2018).

If control of the business's operations and management is shared among spouses, the Division views the business as family owned, and not eligible for certification. See *Id*; See also *Matter of Panko Electric & Maintenance Corp. v. Zapata*, 172 AD 3d, 1682 (3d Dept. 2019); *Matter of Northeastern Steel Welding Corp. v. Webster*, 211 AD 2d, 889 (3d Dept. 1995).

Ms. Tralongo stated that Mr. Radford is involved in every aspect of the management and operation of the business, including financial decision making, estimating, preparing bids, negotiating bonding and insurance, marketing and sales, supervising field operations and negotiating contracts (DED Exhibit 1).

Mr. Radford also provides customer price quotes, submits competitive bids and provides FCC licensing coordination (DED Exhibit 1). His resume states that he was an account manager for Motorola for 19 years and a senior account manager for 15 years (DED Exhibit 8).

Ms. Tralongo's duties include inside sales, email correspondence, customer invoicing, accounts receivable and payable, placing orders, tracking shipments and responding to customer inquiries. She also has sales and marketing experience in the pharmaceutical industry and experience in divorce mediation practice (DED Exhibit 7).

Accordingly, Ms. Tralongo is primarily responsible for the administrative and financial aspects of the business while Mr. Radford is responsible for the core, revenue generating functions of the business.

The Division also found that Ms. Tralongo has not demonstrated adequate managerial experience or technical competence to operate the business enterprise, as required under 5 NYCRR former §144.2(b)(1)(i) (DED Exhibit 2). To evaluate compliance with these eligibility criteria, Division staff considers whether the woman owner can perform the core functions of the business enterprise. Staff reviewed the responses to information requests, tasks performed and the owners' and employees' resumes.

The resumes of the two owners, Ms. Tralongo and Mr. Radford, indicate that Mr. Radford has considerably more training and experience than Ms. Tralongo in relation to ASP's core revenue generating functions (DED Exhibits 7 and 8).

Again, Ms. Tralongo is primarily responsible for managing the administrative and financial functions of the business and Mr. Radford is responsible for the core, revenue generating functions of the business,



The Division's determination that Mr. Radford is the primary decision maker with respect to the core revenue generating functions of the business and had the necessary experience and technical competence to perform and oversee those functions, is supported by substantial evidence.

### **CONCLUSION**

ASP Wireless Solutions, Inc. did not meet its burden to demonstrate that the Division's determination to deny its application for certification as a woman-owned business enterprise with respect to the eligibility criteria at 5 NYCRR former §§144.2(a)(1), 144.2(b)(1) and 144.2(b)(1)(i) was not based on substantial evidence.

### **RECOMMENDATION**

The Division's determination to deny ASP's application for certification as a woman-owned business enterprise should be affirmed.

In the Matter of ASP Wireless Solutions, Inc.  
DED File ID No. 63568  
Exhibit Chart

Exhibit #:	Description of the Exhibits
DED 1	Application for Certification – 11/20/2017
DED 2	Denial Letter – 2/4/2020
DED 3	ASP Corporate Formation Document
DED 4	Proof of Capitalization
DED 5	Bank Signature Card
DED 6	ASP Corporate Bylaws
DED 7	Pamela Tralongo Resume
DED 8	Mark Radford Resume
DED 9	Tralongo/Radford Personal Tax Returns 2015/2016
DED 10	Notice to Proceed via Written Appeal – 5/8/2020
APP 1	Applicant’s Notice of Appeal – 2/25/2020
APP 2	Applicant’s Appeal letter with attachments – 6/1/20