



**Division of Minority
and Women's
Business Development**

New York State
Department of Economic Development
Division of Minority and Women's
Business Development

In the Matter of the Appeal of

Mikeri Group, Inc., d/b/a MGI Elevator

FINAL ORDER 22-12

From a denial of certification as a Minority and Women-owned Business Enterprise pursuant to Executive Law Article 15-A.

This order arises from an administrative appeal brought by Mikeri Group, Inc., d/b/a MGI Elevator (“MGI Elevator” or “Appellant”) pursuant to New York Executive Law Article 15-A and Title 5 of the New York Codes, Rules and Regulations.¹ Appellant seeks reversal of the decision of the Division of Minority and Women’s Business Development (the “Division”), dated December 17, 2018, to deny MGI Elevator’s August 29, 2017 certification application as a Minority-owned and Woman-owned Business Enterprise (“MWBE”).

Appellant requested an administrative hearing by letter dated January 14, 2019, and upon notice to the parties, a virtual hearing was scheduled for September 15, 2022, using the Webex videoconferencing platform. A pre-hearing conference was held a few weeks prior on August 25, 2022, in which the Appellant requested time to retain counsel. The Division was represented by Kyle Satchell, Esq., and Administrative Law Judge (“ALJ”) Marshall H. Day presided over these proceedings.

During the pre-hearing conference, a control date was set by the ALJ for the Appellant to report back with progress on retaining counsel. Appellant failed to appear on the control date and did not contact the ALJ or the Division regarding Appellant’s absence. As such, the hearing was rescheduled to a later date, October 14, 2022, and a Notice of Adjournment and Rescheduled Hearing was sent via email to the Division and Appellant on September 15, 2022. Counsel for the Division also reached out to the Appellant by phone but received no response. Appellant failed to appear at the October 14, 2022 hearing and as such, Counsel for the Division made a motion to dismiss the review of the certification application.


¹ The Division’s December 17, 2018 denial determination and Appellant’s January 14, 2019 appeal pre-date the December 2, 2020 amendments made to 5 NYCRR Parts 140 et al. Accordingly, the eligibility criteria set forth under the former regulations are referenced throughout this final order.

On November 7, 2022, the Division received a Recommended Order from Judge Day affirming the Division's denial of certification, based upon the Appellant's failure to appear at the hearing and contest the basis of the Division's denial determination. Judge Day found the Appellant in default and granted the Division's motion to dismiss the review of the Appellant's certification application.

After considering the appeal record, I accept the recommendation to affirm the denial determination. While Paragraph 8 of the ALJ's Recommended Order (regarding an Appellant's waiver to challenge the review of a denial determination due to its failure to appear at a hearing) does not apply to this administrative appeal, an Appellant in an administrative appeal does bear the burden of proving the Division's denial of its MWBE certification was not supported by substantial evidence. *See* New York State Administrative Procedures Act § 306(1). Here, the Appellant failed to meet this burden of proof by failing to attend the hearing and contest the denial grounds. Further, "unless precluded by statute, disposition may be made of any adjudicatory proceeding by...default." New York State Administrative Procedures Act § 301(5). As such, the Division accepts the ALJ's recommendation to affirm the denial of certification based on Appellant's failure to appear.

It is hereby **ORDERED** that the decision to deny certification, dated December 17, 2018, is affirmed.

December 1, 2022

Jerome A. DuVal 
Executive Vice President & Executive Director
Division of Minority and Women's Business Development