



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

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In the Matter of the Appeal of

**Anderson's Tree Service, Inc.**

FINAL ORDER 23-10

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

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This order arises from an administrative appeal brought by Anderson's Tree Services, Inc. ("ATS" or "Appellant", pursuant to New York Executive Law Article 15-A and Title 5 of the New York Codes, Rules and Regulations. Appellant seeks reversal of the decision of the Division of Minority and Women's Business Development (the "Division"), dated March 10, 2023, to deny ATS' August 14, 2019, certification application as a Woman-owned Business Enterprise ("WBE").

Appellant requested to appeal via written submission by Appeal Form dated April 13, 2023, and a notice to proceed via written Appeal was sent via electronic mail to the Appellant on April 18, 2023, in which the Appellant was advised that their written appeal must be submitted 60 days following receipt of the Division's Denial Determination. Despite the Appellant's failure to respond to the Notice to Proceed, notice to the parties sent via electronic mail and regular mail, dated August 28, 2023, a pre-hearing conference was scheduled for September 28, 2023, using the Zoom videoconferencing platform. The notice of the pre-hearing conference advised the Appellant that failure to appear and failure to request a new date on or before the date of the pre-hearing conference would be considered a default. The video conference invitation was sent by the Administrative Hearings Unit to the Appellant on August 29, 2023. The Appellant failed to accept the meeting invitation and responded to the invitation with "please cancel" on August 29, 2023. Appellant failed to respond to Administrative Law Judge ("ALJ") Adrienne R. Lotson's inquiry of whether the Appellant wished to reschedule the conference, failed to appear at the pre-hearing conference, and failed to contact Division counsel or the Administrative Hearings Unit to request a new date. The Division was represented by Laurel Wedinger-Gyimesi, Esq., and ALJ Lotson presided over the proceeding. During the pre-hearing conference, the Division made a motion to dismiss the review of the application based on the Appellant's failure to appear.

On October 2, 2023, the Division received a Recommended Order from ALJ Lotson affirming the Division's denial of certification, based upon the Appellant's failure to appear at the pre-hearing conference. ALJ Lotson 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. As noted in the Recommended Order, the Appellant in an administrative appeal bears the burden of proving the Division's denial of its WBE certification was not supported by substantial evidence. *See* 5 NYCRR § 145.2(b). Here, the Appellant failed to meet this burden of proof by failing to attend the pre-hearing conference. Further, "unless precluded by statute, disposition may be made of any adjudicatory proceeding by...default." New York State Administrative Procedure 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 March 10, 2023, is affirmed.

October 13, 2023



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Jason M. Clark  
Executive Vice President and Executive Director  
Division of Minority and Women's Business Development