

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

In the Matter

-of-

the Application of

Arawak Contracting, LLC

For certification as a Minority-owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID NO.: 64102

RECOMMENDED ORDER ON DEFAULT



David A. Murad
Administrative Law Judge
June 28, 2023

STATE OF NEW YORK
DEPARTMENT OF ECONOMIC DEVELOPMENT

In the Matter of the Appeal of:

ARAWAK CONTRACTING, LLC,
Appellant,
- against -

**RECOMMENDED
ORDER
ON
DEFAULT**

NEW YORK STATE DEPARTMENT OF
ECONOMIC DEVELOPMENT,
Respondent.

FILE ID: 64102

To review a determination denying an application for certification as a Minority-owned Business Enterprise pursuant to Executive Law Article 15-A.

APPEARANCES

David A. Murad, Administrative Law Judge, New York State Department of Economic Development, and William Chen, Esq., for Respondent.

WHEREAS:

1. The above proceeding was commenced by the filing of an appeal, pursuant to New York Executive Law Article 15-A and Title 5 of the Official Compilation of Codes, Rules and Regulations of the State of New York Parts 140-144, by Arawak Contracting, LLC, to challenge the determination of the Division of Minority and Women’s Business Development (“Division”) that the applicant does not meet the eligibility requirements for certification as a Minority-owned Business Enterprise; and
2. The application for certification was received on September 19, 2018. The application was denied by the Division by a letter dated April 25, 2019. The Appellant thereafter appealed the denial by a letter dated May 5, 2019; and
3. Upon notice to the parties sent via electronic mail and regular mail, dated May 2, 2023, a pre-hearing conference was scheduled for May 17, 2023. The notice advised the Appellant that they would be considered in default if they did not appear for the pre-hearing conference and failed to request a new date on or before the date of the pre-hearing conference; and

4. The video conference invitation was sent via electronic mail on May 8, 2023 and was not accepted by the Appellant; and
5. Appellant failed to appear at the pre-hearing conference, and did not contact either counsel for the Division or the Administrative Hearings Unit; and
6. On administrative appeal, the Appellant bears the burden of proving that the Division's denial of Appellant's Minority Business Enterprise certification is not supported by substantial evidence (5 NYCRR §145.2(b)); and
7. At the May 17, 2023 pre-hearing conference, the Division made a motion to dismiss the review of the application, based on the Appellant's failure to appear. The motion was granted.
8. On May 30, 2023, Appellant requested a new date for the conference by electronic mail. Appellant was advised that a default had been granted and appellant was directed to provide a reason for its failure to appear. Appellant did not respond to the electronic mail and failed to provide a reason for the failure to appear.

RECOMMENDATION

Based upon the Appellant's failure to appear at the pre-hearing conference, and subsequent failure to provide a reason for Appellant's failure to appear, the Appellant should be deemed in default, the motion of the Division to dismiss the review of the application be granted and the application for review dismissed in accordance with State Administrative Procedure Act §301.5.