



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

In the matter of the appeal of

ASPELL SERVICES, INC.

FINAL ORDER 23-09

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

This order arises from an administrative appeal brought on behalf of Aspell Services, Inc. (“Aspell” or “Appellant”) pursuant to section 144.2 of 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 March 9, 2022, to deny Aspell’s December 31, 2020, certification application as a Woman-owned Business Enterprise (“WBE”).

Appellant initiated its appeal by sending a request to appeal form and accompanying letter received on April 14, 2022, to the Division, requesting to appeal the denial determination via written submission. On October 5, 2022, the Division sent a notice to proceed by written appeal to the Appellant. The Division responded to the written appeal submission with its Memorandum of Law dated June 15, 2023, and an Affidavit of Glenn Butler, Associate Certification Director for the Division, with attached Exhibits. Administrative Law Judge (“ALJ”) David A. Murad presided over the appeal.

The issues on appeal were whether Appellant sufficiently demonstrated that the minority owner relied upon for certification (1) has made capital contributions to the business enterprise proportionate to their equity interest therein, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR § 144.2(b)(2); (2) possesses adequate, industry-specific competence to make critical business decisions without relying on

¹ The Division’s March 9, 2022, denial determination postdates the December 2, 2020, amendments made to 5 NYCRR Parts 140 et al. Accordingly, the eligibility criteria set forth under the amended regulations are referenced throughout this final order.

other persons, as required by 5 NYCRR § 144.2(c)(1); (3) makes operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise, as required by 5 NYCRR § 144.2(c)(2); (4) is the highest-ranking officer(s) of the business enterprise, and, where applicable control the board of directors or serve as a general partner, as required by 5 NYCRR § 144.2(d)(1); and (5) negotiates business contracts and represents themselves to clients as the principals of the business enterprise, as demonstrated by full executed business agreements, as required by 5 NYCRR § 144.2(d)(2).

On September 8, 2023, the Division received a Recommended Order from ALJ Murad that recommended affirmation of the Division's denial of the application to certify Aspell Services, Inc. as a MBE on the grounds set forth in the Division's March 9, 2022, denial letter.

After considering the appeal record, I accept the recommendation of the Administrative Law Judge as it pertains to the facts of this case. Incorporation by reference is hereby made with respect to the findings and conclusions of the Recommended Order.

It is hereby **ORDERED** that the decision to deny certification, dated March 9, 2022, is affirmed. Accordingly, Aspell Services, Inc. will not be listed in the Division's directory for Minority and Women-owned Business Enterprises.

September 22, 2023



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