



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

In the matter of the appeal of

Beam Mack Sales & Service, Inc.

FINAL ORDER 16-55

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

This order arises from an administrative appeal brought on behalf of Beam Mack Sales & Service, Inc. ("Beam Mack") pursuant to section 144.4 of title 5 of the New York Codes, Rules and Regulations. Appellant, Ms. Chelsea Conway, seeks reversal of the decision of the Division of Minority and Women's Business Development (the "Division"), dated January 07, 2016, to deny Beam Mack certification as a Women-owned Business Enterprise ("WBE").

This appeal was assigned to Administrative Law Judge Daniel P. O'Connell. Appellant, represented by Mr. Kenneth Africano, Esq. appeared at an appeal hearing on this matter on August 18, 2016. The Division was represented by Mr. Phillip Harmonick, Esq. A recording of the proceedings is contained in the appeal record.

The issues on appeal were whether the Appellant: made a contribution of money, property, equipment, or expertise to Beam Mack in proportion to her ownership interest therein; shared in risks and profits of Beam Mack in proportion to her ownership interest therein; possessed the requisite technical expertise or managerial experience to operate the business enterprise; made decisions pertaining to the operation of the business enterprise; controlled business negotiations on behalf of the business enterprise; and was permitted by the corporate bylaws and other relevant business agreements of Beam Mack to control the business enterprise without restrictions.

On October 31, 2016, the Division received from Administrative Law Judge O'Connell a Recommended Order that affirmed the Division's determination to deny the application by Appellant to certify Beam Mack as a WBE. The Recommended Order recommended that that

the denial should be affirmed on each of the grounds identified in the Division's January 07, 2016 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 January 07, 2016 is affirmed. Accordingly, Beam Mack will not be listed in the Division's directory of certified Minority and Women-owned Business Enterprises.

November 01, 2016



Lourdes Zapata
Executive Director
Division of Minority and Women's
Business Development